



Accessing social rights in Denmark

Jacqueson, Catherine

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Author:

Associate Professor, PhD Catherine Jacqueson¹

Faculty of Law, University of Copenhagen

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EXECUTIVE SUMMARY

The aim of this report is to give an overview of the Danish system relating to immigration and welfare rights in order to identify the various barriers to the free movement of Union citizens and their family members. This report addresses the legal and cultural framework, how it works in practice, and the attitude of main actors, such as the media and political parties. It thus looks both at theory and practice.

EU-based migration to Denmark is still relatively low, and is essentially exercised by workers and students. Apart from Scandinavians, the most representative EU-citizens actually living in Denmark are in decreasing order Polish, German and British nationals.

Debates among politicians reflected in the media have since the enlargement of the EU to 10 new Member States in 2004 focused on and off on the issue of access by migrants to social benefits and the issue of social tourism. The debate and discussions intensified in the spring 2013 as a result of the CJEU's ruling in the *LN* case (case C-46/12) ensuring access to student maintenance grants for Union citizens working in Denmark besides studying there. Discussions got very virulent in the summer 2013 and up to the elections of the European Parliament in May 2014. The reason for that is the government's change of practice in administering family benefits, granting them to all Union citizens lawfully residing in Denmark without any requirement of prior residence in the country. This change was the result of a request from the European Commission's emphasizing that the existing law was incompatible with EU law, especially with Regulation 883/2004 on the coordination of social security schemes.

While Denmark praises itself for being a good pupil in faithfully respecting and applying EU law, reality is another where EU law is seen as a threat to the welfare State. As a result politicians, public opinion and the media all attempt to protect the national system from the 'intruder'. This might partly be due to the fact that the Danish welfare system is quite generous and essentially financed through general taxes. Another reason could also be the successful attempt of the Eurosceptic right wing party, The Danish People's Party, to draw attention to migrant Union citizens and circumvent their social rights (like it did in the case of family benefits).

Finally, while the Danish system is at the outset protective of the social rights of non-nationals with its focus on equal treatment of all living in Denmark, the picture is at times more blurred upon a closer look with the imposition at times of residence requirements and obstacles in practice as a result of a rather formalistic approach. [In a similar vein, the cases of health care and student maintenance grants are two areas where the Danish authorities have reluctantly accepted to follow the case-law of the CJEU.](#)

CHAPTER 1: SETTING THE SCENE

In a nutshell, the Danish welfare system can be characterized as follows:

- It is a relative *generous system* which is mainly – but not exclusively – financed through *general taxes*. The tax pressure is high compared to other Member States, but it is close to an *all inclusive* treat with *inter alia* free access to health care and education. The Danish welfare system is based on the principle of equal treatment, and in many of its elements on the principle of universality. Yet, some social rights such as the protection against unemployment and sickness as well as labour market pensions are to a certain extent financed through contributions of the workers. Thus there is a tendency to move away from the *welfare state* as the central legal figure to the *welfare society* where employers, the labour market partners and the work contract become more prominent.²

² Kirsten Ketscher, 'Socialret – Principper, Rettigheder og Værdier', Karnov, 4th ed. 2014, pp. 42-43.

- In addition, the Danish welfare model is now almost famous in Europe for its system of *flexi-security*. This system is characterised by a high degree of flexibility in employment and redundancy rules where the social partners play an essential role, on the one hand, and a high social security safety net and guaranteed minimum living standard, on the other hand.³
- The Danish welfare system is based on two different rationales which are at times enmeshed in a given Act: (1) the principle of solidarity and (2) the principle of survival.⁴

(1)The *principle of solidarity* is in ‘modern times’ rooted in the creation of unions in the 19th century where the members pulled their resources into a common pot which should work as a kind of insurance where the individual needs support from the community such as in the event of sickness, old age and unemployment. Nowadays one can say that the welfare State is replacing the private social security funds which can be seen as a gigantic social security fund financed by taxpayers.

(2)The *principle of survival* also has its origin in the middle of the 19th century where the State in the Constitution of 1848 overtook the responsibility previously assumed essentially by the Church to ensure minimum means of subsistence/social assistance to all on its territory and who cannot provide for themselves.

The Danish system, which is essentially financed through taxes, is deeply rooted in the principle of territoriality where benefits are at the outset conditional upon *stable residence* in the country and are not exportable. In addition, the system is based on a certain degree of homogeneity of the population and on an unwritten ‘social contract’ assuming that people are born, living and dying in Denmark, which may ease solidarity mechanisms.⁵ EU law with its principles of free movement, equal treatment, prohibition of obstacles to the free flow of persons, goods and services and its principle of exportability of social security benefits contained in Regulation 883/2004 may by some be viewed as an ‘intruder’ and ‘disturber’ of the national system and ‘social contract’.

Yet, independently of EU law but under the influence of global liberal thinking, political forces in Denmark have recently attempted to liberalise essential welfare services and to subject the public sector to new management thinking with focus on effectiveness and measurability of results.⁶ Such shift towards the ‘marketisation’ of essential welfare services has especially been salient since 2001 with the insertion of a certain degree of free choice between public and private providers in respect of health care, activation measures to find employment and help for the elderly.

CHAPTER 2: MIGRATION TO DENMARK

³ See inter alia, U. Neergaard and R. Nielsen, *Blurring Boundaries*, European Labour Law Journal, 2010, p. 439.

⁴ See Kirsten Ketscher, ‘Socialret – Principper, Rettigheder og Værdier’, Karnov, 4th ed 2014, pp. 43-49.

⁵ U. Neergaard and R. Nielsen, *Blurring Boundaries*, European Labour Law Journal, 2010, p. 440.

⁶ See further, Ove K. Pedersen, ‘Konkurrencestaten’ (the Competitive State), Hans Reitzels Forlag, 2011.
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Coordination.team@beucitizen.eu, www.beucitizen.eu

- Question 1:** What are the key trends in migration of EU citizens into the host country over the past 10 years, including:
- Changes in numbers of people arriving from other EU member states
 - Patterns in migration e.g from EU 15; A8 countries; Malta and Cyprus; A2 countries and Croatia
A8 countries are: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia (since 2004).
A2 countries are: Bulgaria, Romania (since 2007)
- Question 2:** (a) What are the main regional differences in migration of EU citizens within the country? E.g movement to:
- Certain geographic regions
 - Certain sectors of the economy
 - Urban and rural areas
- (b) In what ways (if at all) are these different regions and sections of the economy likely to affect EU citizens' access to rights to subsistence benefits; housing; health care and education?
- Question 3:** (a) Please provide a demographic overview of EU migrants from other countries: Consider the following:
- Age
 - Skill/education level
 - Gender
 - Household composition
 - Family conditions (single, married, with children)
 - Country of origin
 - Ethnicity and language groups
 - Refugees versus migrants with a permit for education, work or marriage (other domains)
- (b) In what ways (if at all) are these different demographic factors likely to affect EU citizens' access to rights to subsistence benefits; housing; health care and education?

2.1. Method

Data available from Eurostat from 2014 show the number of Union citizens by country of nationality residing in Denmark between 1998 and 2013. For 2013, the largest demographic groups living in Denmark are in decreasing order: (1) Polish nationals, (2) German nationals, (3) British nationals, and (4) Swedish nationals closely followed by Romanians.

EU citizens by country of citizenship living in Denmark. Source: The Eurostat database in July 2014.

Eucitizens by country of citizenship (minus reporting country) in Denmark																
Citizen/Time	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Austria	719	787	749	746	759	781	806	847	834	887	1.000	1.065	1.132	1.204	1.243	1.279
Belgium	484	526	520	520	550	570	568	584	602	660	731	792	818	857	897	996
Bulgaria	341	357	394	408	426	460	493	536	572	583	823	1.533	2.321	3.189	4.007	5.006
Cyprus	30	28	30	25	25	20	19	19	18	19	29	32	34	36	40	50
Czech Republic	133	163	197	225	254	279	298	368	507	487	566	691	709	751	859	910
Denmark																
Germany	11.873	12.429	12.678	12.701	12.911	12.973	13.285	13.552	14.182	15.435	18.001	20.387	21.114	21.630	22.055	22.399
Estonia	384	411	395	458	503	534	541	539	611	682	807	934	958	1.081	1.177	1.330
Greece	653	669	664	660	675	650	666	665	694	761	788	869	941	1.008	1.198	1.531
Spain	1.563	1.695	1.705	1.802	1.941	2.074	2.135	2.134	2.354	2.620	2.929	3.279	3.280	3.774	3.977	4.548
Finland	2.096	2.101	2.145	2.085	2.084	2.096	2.074	2.075	2.088	2.156	2.228	2.327	2.316	2.328	2.335	2.395
France	3.011	3.270	3.266	3.296	3.241	3.233	3.401	3.484	3.686	4.061	4.515	4.859	4.947	5.351	5.428	5.688
Hungary	366	377	406	391	445	447	463	527	624	724	1.019	1.357	1.586	1.867	2.174	2.785
Ireland	1.094	1.117	1.098	1.094	1.102	1.130	1.149	1.145	1.183	1.205	1.240	1.305	1.306	1.371	1.417	1.493
Italy	2.592	2.646	2.718	2.833	2.928	2.962	3.006	3.050	3.164	3.457	3.820	4.206	4.381	4.750	5.068	5.689
Luxembourg	16	15	18	18	19	18	20	23	23	25	27	30	34	38	38	38
Lithuania	555	731	884	1.221	1.496	1.616	1.681	1.946	2.372	2.945	3.489	4.315	5.234	6.525	7.724	8.749
Latvia	449	509	558	742	860	909	905	942	1.085	1.261	1.531	1.885	2.521	3.270	3.853	4.204
Malta	17	20	24	23	22	23	25	27	34	40	38	46	55	58	56	57
Netherlands	3.821	4.089	4.271	4.531	4.752	4.932	5.079	5.331	5.508	5.810	6.020	6.184	6.253	6.399	6.587	6.774
Poland	5.457	5.508	5.571	5.548	5.735	5.689	5.854	6.199	7.353	9.701	13.753	19.890	21.119	22.619	24.477	26.759
Portugal	495	523	526	555	571	568	592	602	643	727	878	984	1.052	1.161	1.276	1.505
Romania	1.095	1.046	1.099	1.106	1.176	1.270	1.329	1.405	1.563	1.672	2.386	3.744	5.076	6.934	9.453	12.374
Sweden	10.036	10.448	10.764	10.839	10.817	10.704	10.752	10.914	11.154	11.555	12.099	12.681	12.828	12.933	13.107	13.358
Slovenia	32	35	40	51	50	50	57	57	78	102	135	184	204	244	249	305
Slovakia	51	65	111	127	127	140	164	184	303	301	507	777	848	919	1.073	1.300
United Kingdom	12.771	12.880	12.700	12.630	12.786	12.724	12.830	12.827	12.894	13.183	13.657	14.153	14.297	14.700	14.962	15.398

Yet, the questions have been answered on the basis of Danish data collected from the Statistics Unit of the Danish Immigration Service (see below tables a-e)). The available Danish statistics concern the number of

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registration certificates issued to citizens of other Member States who settle in Denmark. They are sorted out by nationality, grounds of certificate, sex and age. It was not possible to acquire other demographic data. Likewise, it was not possible to look at regional differences (question 2 of the questionnaire).

The data do not include people that have *not* requested a registration certificate, typically Union citizens leaving before three months' time. The statistics on the number of registration certificates are differing from statistics concerning the number of immigrants living in Denmark depicted above as:

- 1) The statistics only take into account EU citizens who have requested a *registration certificate* since 2003. It does not include those who have left Denmark and those who have requested a permanent right of residence. Thus it does not reflect the number of EU citizens actually living in Denmark at a given time (for that see above the data extracted from Eurostat).
- 2) A person can have had more permits and this is included in the provided statistics.
- 3) Numbers from Sweden, Norway, Iceland and Finland are not representative, since these countries have an agreement with Denmark (The Nordic Agreement of 1952) which *inter alia* implies that citizens from these countries can travel to and settle in Denmark without applying for a registration certificate.

2.2. Analysis of migration statistics

Key trends in number of EU migrants sorted by ground (table a))

In the period from 2003 to 2013 a total number of 217 025 certificates were delivered. The largest number in total concerns Polish nationals (43 496) and second come German nationals (32 316). In the same period the total number of certificates each year has risen from 6 311 in 2003 to 31 307 in 2013.

In 2013 most immigrants came from Poland (5 539) and Romania (5 293) as was the case in 2012 and 2011. The third largest number of Union citizens settling in Denmark in 2013 is from Germany (2 960). See also table b) on distribution by country and ground of residence.

In 2008 large increases are seen in the number of certificates to nationals of Bulgaria and Romania. This is explained by the accession of these countries to the EU in 2007, and Denmark did not restrict the free flow of citizens from these two countries.

The total number of Union citizens has been steadily rising since 2003, except from 2008 to 2009 when the number dropped from 30 227 to 23 731. This drop was mainly caused by a decrease in immigrants from Poland, and is most likely the result of the economic crisis.

EU 15, A8, Malta and Cyprus and A2 all show a steady increase since 2003 in the number of immigrants. The only exception is immigrants from A8 in 2009 (caused by the decline mentioned above in Polish nationals) and from A8 in 2013 when there appears to be a slight drop.

Table a) on immigration according to the country of origin and time. Source: The Danish Immigration Service, Statistic Unit, obtained in April 2014

Table a. Nationality

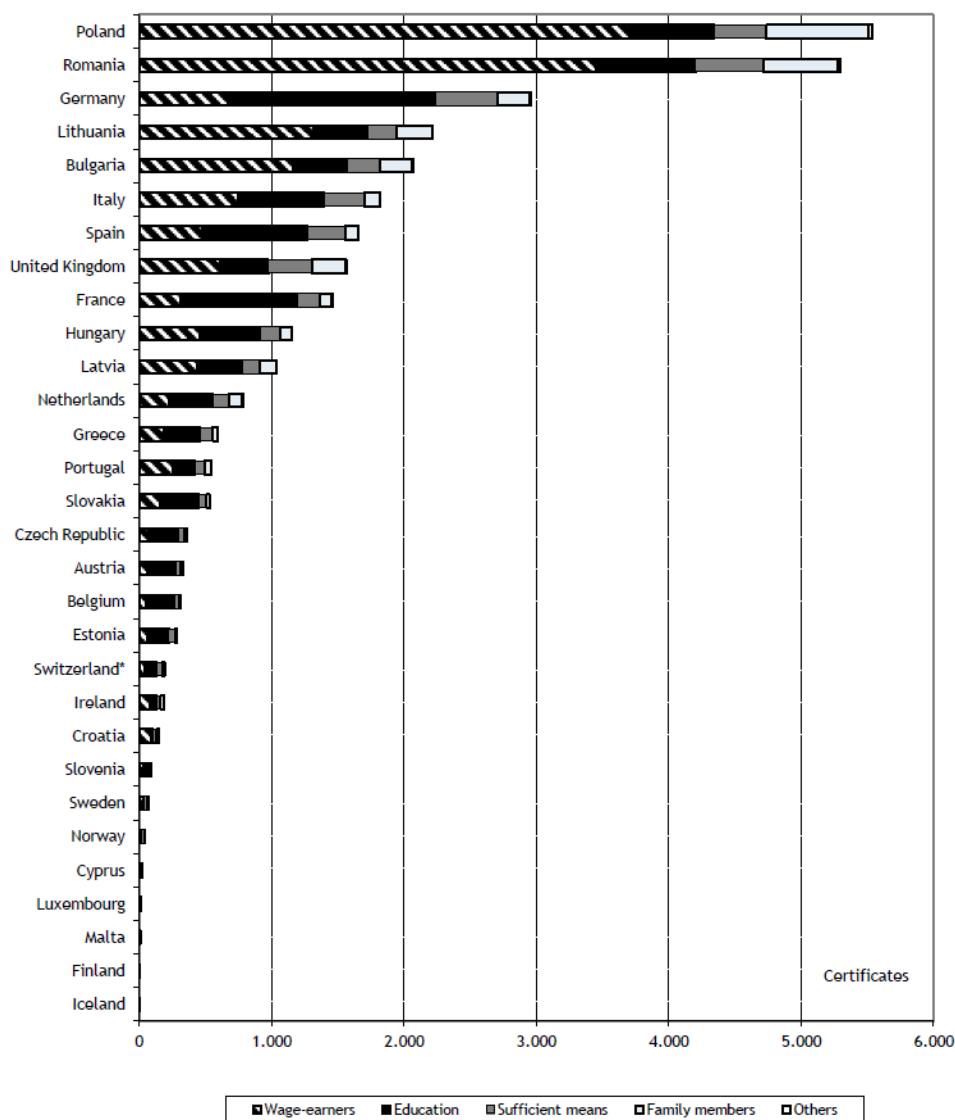
Nationality	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Belgium	140	157	154	203	210	216	236	257	266	349	314	2.502
Bulgaria	2	7	3	1	224	838	1.134	1.302	1.413	1.824	2.069	8.817
Cyprus		6	6	2	11	8	8	10	8	19	24	102
Estonia	1	64	91	173	149	259	254	294	331	346	282	2.244
Finland	5	7	7	6	9	9	5	3	8	6	7	72
France	835	931	1.119	1.212	1.189	1.245	1.323	1.445	1.403	1.498	1.457	13.657
Greece	126	107	156	185	156	184	211	228	365	533	592	2.843
Ireland	132	123	122	149	121	129	124	170	170	193	187	1.620
Iceland	8	4	8	5	3	2	10	7	3	2	7	59
Italy	663	719	711	923	930	991	1.096	1.205	1.255	1.500	1.822	11.815
Croatia				1		4	3	3	1		151	163
Latvia	4	61	131	214	276	674	1.072	1.220	1.167	1.084	1.040	6.943
Liechtenstein	1	2	6		8	1	2	4	2	4		30
Lithuania		238	453	643	607	2.077	1.923	2.252	2.373	2.513	2.217	15.296
Luxembourg	3	2	5	3	3	8	11	10	2	8	11	66
Malta		9	15	12	5	13	15	11	12	12	9	113
Netherlands	520	605	581	772	668	613	566	630	735	726	786	7.202
Norway	32	14	11	15	17	14	21	16	12	18	42	212
Poland	3	396	1.130	1.648	1.710	12.163	5.823	4.829	5.091	5.164	5.539	43.496
Portugal	133	154	176	219	245	239	265	294	312	468	547	3.052
Romania	2	2	5	5	345	1.878	2.150	2.926	3.782	4.606	5.293	20.994
Switzerland	95	122	140	176	184	193	146	203	180	196	193	1.828
Slovakia	2	18	74	89	85	545	303	338	435	530	531	2.950
Slovenia		19	36	63	54	79	62	93	112	116	90	724
Spain	769	835	882	954	971	1.019	1.093	1.366	1.398	1.587	1.657	12.531
Great Britain	1.100	1.017	1.064	1.207	1.214	1.246	1.163	1.312	1.448	1.424	1.564	13.759
Sweden	18	40	30	19	29	32	25	33	30	33	68	357
Czech Republic		94	173	205	190	356	332	317	405	363	364	2.799
Germany	1.561	1.718	2.069	3.048	4.287	4.369	3.355	3.017	3.027	2.905	2.960	32.316
Hungary	2	53	138	210	223	588	715	690	756	1.157	1.154	5.686
Austria	154	190	188	229	259	235	285	316	307	284	330	2.777
Total	6.311	7.714	9.684	12.591	14.382	30.227	23.731	24.801	26.809	29.468	31.307	217.025
EU 15	6.159	6.605	7.264	9.129	10.291	10.535	9.758	10.286	10.726	11.514	12.302	104.569
A8	12	943	2.226	3.245	3.294	16.741	10.484	10.033	10.670	11.273	11.217	80.138
Malta and Cyprus	-	15	21	14	16	21	23	21	20	31	33	215
A2	4	9	8	6	569	2.716	3.284	4.228	5.195	6.430	7.362	29.811

*The numbers include all registration certificates issued to Union citizens and their family members, who are themselves nationals of one of the 28 EU Member States and EEA countries. Before the accession to the EU of their countries (A8, Malta, Cyprus and A2) those family members were considered as third-country nationals.

Key trends in the number of EU citizens sorted by ground (table b) and c))

The highest total number of certificates has been given on the grounds of work (93 985) and second on grounds of education (74 047). Whilst the largest proportion of migrants from Poland, Romania and Bulgaria came to Denmark for the purpose of work, a large majority of the French, German, Austrian, Belgian, Spanish nationals and nationals of the Netherlands entered the country for the purpose of study.

Table b) on EU/EEA registration certificates in 2013 – broken down by category for EU/EEA citizens and Switzerland. Source Danish Immigration Service, Statistics Unit, obtained in November 2014



Note: Data refers to first time applications.

TABLE C) ON THE GROUNDS OF RESIDENCE. SOURCE: DANISH IMMIGRATION SERVICE, STATISTIC UNIT, OBTAINED IN APRIL 2014

Table c. Grounds								
Grounds	2003	2004	2005	2006	2007	2008	2009	2010
Work*	2.127	2.142	2.514	3.684	4.532	17.837	11.019	10.560
Education	2.549	3.807	4.589	5.753	5.996	6.817	7.974	8.954
Family**	707	748	1.418	1.730	2.742	4.456	3.250	2.932
Other***	928	1.017	1.163	1.424	1.112	1.117	1.488	2.355
Total	6.311	7.714	9.684	12.591	14.382	30.227	23.731	24.801

Grounds	2011	2012	2013	Total
Work*	11.673	13.163	14.734	93.985
Education	9.034	9.204	9.370	74.047
Family**	2.951	3.350	3.175	27.459
Other***	3.151	3.751	4.028	21.534
Total	26.809	29.468	31.307	217.025

*Includes wage-earning employment and posted workers

**It includes family members who are nationals of one of the 28 EU Member States and EEA countries. Before the accession to the EU of their countries (A8, Malta, Cyprus and A2) those family members were considered as third-country nationals.

***Includes: Sufficient means, self-employed businessmen and retirees

Finally, the periodical, *Ugebrevet A4*, could report in November 2014 that many citizens from the Central-/East-European countries are moving to the country side where they take up work in the agricultural and industrial sectors.⁷ Since 2008, the number of Union citizens from these countries who have settled in small municipalities has indeed doubled.

Demographics (Table d) and e))

Each year since 2003 there has been a majority of male immigrants. When counting the total number of Union citizens and their family members settling in Denmark since 2003 there is a 21 % majority of male immigrants. Around half of the total number of immigrants is between 21 and 30 years old (116 584).

⁷ Ugebrevet A4, Kåre Kildall Rygsaard, 'Østeuropæere flytter på landet', 11th of November 2014.

Table d) on EU citizens living in Denmark sorted out by sex. Source: Danish Immigration Service, Statistics Unit, obtained in April 2014

Table d. Sex

Sex	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Female	2.792	3.567	4.647	5.861	6.808	11.607	10.578	11.093	11.739	12.865	13.294	94.851
Male	3.519	4.147	5.036	6.730	7.572	18.619	13.153	13.708	15.070	16.603	18.013	122.170
Unknown			1		2	1						4
Total	6.311	7.714	9.684	12.591	14.382	30.227	23.731	24.801	26.809	29.468	31.307	217.025

Table e) on EU citizens living in Denmark sorted out by age. Source: Danish Immigration Service, Statistics Unit, obtained in April 2014

Table e. Age

Age	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
< 21 years	1.013	1.235	1.771	2.355	3.263	5.479	4.848	5.039	5.514	6.172	6.012	42.701
21 - 30 years	3.632	4.703	5.720	7.338	7.554	14.563	12.540	13.713	14.611	15.599	16.611	116.584
> 30 years	1.666	1.776	2.190	2.891	3.564	10.182	6.342	6.049	6.684	7.696	8.673	57.713
Unknown			3	7	1	3	1			1	11	27
Total	6.311	7.714	9.684	12.591	14.382	30.227	23.731	24.801	26.809	29.468	31.307	217.025

CHAPTER 3: THE DANISH POLICY CONTEXT

Question 4: How would you describe the relationship between policies governing immigration from other EU countries and welfare policy? E.g in what ways do current policies go against / endorse EU Citizens' rights to access to welfare provisions (to subsistence benefits; health care; housing; education, work). How would you describe the relationship between policies governing immigration from other EU countries and family law (family reunion, children's rights, etc.)?

3.1. Relationship between immigration and welfare policies

The Danish welfare system is to a large extent – but not exclusively – based on non-contributory benefits, most of them being accessible to citizens lawfully residing in Denmark. In addition, it can be characterized as a generous system compared to most other Member States, and is mainly financed through general taxes. In principle, immigrants who settle in Denmark should have access to Danish non-contributory benefits provided that they are lawfully residing on the Danish territory. For example, according to Section 75(2) of the Constitution dating back to 1849, people who are unable to support themselves are entitled to receive assistance from the State. This provision says nothing specifically about who is entitled to State assistance, but successive Acts on Social Policy have determined that 'anyone residing lawfully in Denmark' is entitled to assistance. In addition health care is free of charge and accessible to all who are lawfully residing in Denmark. In practice access to welfare benefits is dependent upon demonstration of a Danish registration number (cpr. nr). The registration number in turn can only be obtained when the foreigner holds a lawful permission to stay in Denmark and proof of residence in Denmark.⁸ In other words, in real life, without a cpr. number there is in principle no access to welfare benefits, such as benefits in kind (for example health care and shelter homes), and cash benefits (such as the minimum means of subsistence and family benefits).

While there is a direct link between lawful residence and access to welfare benefits, this clear-cut picture is however more blurred upon a closer look.

Exclusion of specific categories of Union citizens

Because of the direct link between lawful residence and access to non-contributory benefits, the Danish government upon request from the Danish People's Party (Euro sceptic right wing party) requested an in depth analysis of the legal rights of Union citizens to welfare benefits in the wake of the EU enlargement to 10 new countries in 2004.⁹ Indeed, Denmark could not any longer control immigration from these States and feared that the survival of its welfare system was at risk upon enlargement to much poorer countries. As a result, access to welfare and social benefits was precluded for Union citizens within the first 3 months of their residence in Denmark or for a longer period if they had entered the country to search for employment. For example, the Act on Active Social Policy was amended in 2004, and explicitly excluded short-term residents and jobseekers from entitlement to public assistance except from financial help to get back home.¹⁰ The rationale is that pursuant to EU law such persons are supposed to be self-sufficient and are therefore not entitled to any financial support from the State.

⁸ For further discussion on the registration number, see below at p. 25 under section 5.3.

⁹ Report on Danish social benefits in the light of EU enlargement ('*Danske sociale ydelser i lyset af udvidelsen af EU*') from the pluriministrial working group of the 11th of April 2003. In addition, the Danish People's Party was also the successful initiator of a report on foreigners' access to social benefits and 'residence requirements' by the Ministry of Employment of March 2011 ('*Rapport om optjeningsprincippet i forhold til danske velfærdsydelser*'). Still in 2011, the economic consequences of foreigners were also the object of a report from a working group under the government, '*Indvandringens økonomiske konsekvenser*', 4/2011.

¹⁰ Act No 282 on Active Social Policy of 26/4/2004 inserting Sect. 12a in the Act No 455 on Active Social Policy of 1997 ('*Lov om aktiv socialpolitik*').

Likewise, in accordance with Art. 24 of the EU Citizenship Directive (Directive 2004/38), Union citizens who are studying in Denmark are excluded from access to study maintenance grants within the first 5 years of residence. Until 2013, this was also the case for those EU students who worked besides studying. Practice was uncertain in this respect and Union citizens who had come to Denmark for the purpose of studying were excluded from the right to maintenance grant even though they had subsequently found employment. In other words, Danish authorities were relying on the purpose of coming to Denmark in order to define Union citizens' legal position. This practice led to a preliminary question to the CJEU and the *LN* judgment in February 2013, where the Court ruled that such exclusion was contrary to the free movement of workers.¹¹ Danish practice was changed following the Court's ruling.

Residence requirements to all citizens

In addition, several benefits were/are conditional upon residence requirements which apply regardless of nationality. This is for example the case of the general retirement allowance.¹² This was also the case until 2011 for the minimum means of subsistence/social assistance ('*køntanthjælp*') mentioned above which could only be obtained by persons who fulfilled the requirement of 7 years of residence in Denmark out of the last 8 years.¹³ If this condition was not fulfilled, individuals could be entitled to a much lower allowance called the '*starthjælp*'. Family benefits were also conditional upon prior residence between 2012 and 2013.¹⁴ Payment of the full benefit required two years of residence in Denmark. The law is still valid as no majority could be found to amend it. Yet, in order to respect its obligations flowing from EU law, the government has ordered the payment agency to administrate claims without discrimination leaving aside the residence requirement in respect of Union citizens and their family members.

The requirement of lawful residence

Finally, since access to social benefits is conditional upon lawful residence, the question is therefore when this requirement is fulfilled.¹⁵ This issue has especially been salient in Denmark in respect of homeless persons who are nationals of other Member States concerning their access to shelter homes. According to Danish law, shelter homes which are to some extent State-funded shall only accept persons who are lawfully residing in the country. In practice, lawful residence has in this respect been interpreted restrictively as excluding undocumented citizens (i.e. those who do not have a registration certificate, a residence card or a Danish health card also known as the yellow card).¹⁶ Such interpretation might conflict with the Directive as (1) all EU-nationals have an unconditional right of residence within the first 3 months and beyond, when the person is actively looking for employment (without registration document), and (2) the registration certificate is not constitutive of the right of residence which might be documented by other means. The municipalities' underlying rationale is that such persons are in any event not lawfully residing in Denmark, since they are requesting public support by using shelter homes. According to the authorities, they thus do not fulfil the condition of self-sufficiency and are a burden on the social system.

¹¹ Case C-46/12.

¹² See further below under section 5.1.

¹³ Act no 856 from 23.08.2012 ('*Bekendtgørelse af lov om aktiv socialpolitik*').

¹⁴ Act no 638 of 21.6.2012 ('*Bekendtgørelse af lov om børnetilskud og forskudsvis udbetaling af børnebidrag*').

¹⁵ See decisions of the Appeal Tribunal for Social and Employment Affairs ('*Ankestyrelsen*') A-191-11 of 8/9/11, A-27-07 of 21/11/07.

¹⁶ Information gathered from the Danish Charity organization, DanChurchSocial ('*Kirkens Korshær*'). In January 2013, the organization opened up a shelter home for homeless foreigners. 2/3 of the users are from EU-countries and 1/3 comes from Romania. Most of the users ask for help in understanding and accessing the Danish labour market. For more information, see (in Danish): <http://www.kirkenskorshaer.dk/nyheder/flere-fattigdomsmigranter-s%C3%B8ger-r%C3%A5dgivning>.

3.2. Relationship between immigration policies and family law

Danish immigration laws and those on family reunification are quite restrictive. Yet, concerning Union citizens, Denmark is faithfully implementing the EU Citizenship Directive (Directive 2004/38). It has indeed endorsed the same definitions of family members as those in its Art. 2, and assimilates registered partnership to marriage. A durable relationship under the same roof is also assimilated to marriage. Art. 3 of the Directive on other 'beneficiaries' of the right of family reunification, has been implemented as granting an automatic right of residence to any family member of the Union citizen having the primary right of residence (1) who in the country of origin is dependent on the Union citizen or is a member of his/her household, or (2) who has serious health problems that require the personal care of the Union citizen. The right of residence of ascendants and other family members as just defined above under (1) is conditional upon demonstration of economic dependency both in the host State and in the home State. This is in line with the Court's ruling in *Jia* (case C-1/05).

A few cases concerning the *definition of a family member* pursuant to EU law have reached Danish courts.¹⁷ An Iraqi national, who was facing expulsion, could not be considered as a spouse to a Union citizen since his marriage under Muslim law (religious marriage) was not recognized under Danish law.¹⁸ Nor could he be considered as a father to a Union citizen as he was not 'dependent' upon his child pursuant to Art. 2(2)(d) of the Directive. Finally, the Iraqi national could not demonstrate that he had a durable relationship to a national of another Member State pursuant to the EU Residence Order. This condition was not fulfilled even though it was not disputed that the couple had known each other for at least 6 years, and had in fact lived together for at least one year.¹⁹ The fact that they had a child together and another to come did not alter this finding. In any event, the Supreme Court found that the offenses committed (illegal residence and work) made him a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. He was expelled and prohibited from re-entering the country in 6 years. In a similar case of expulsion concerning a Ganesh national married (in absentia) in Ghana to a Polish national, the Supreme Court did not examine whether the marriage was valid and whether the Ganesh national was thereby a spouse to a Union citizen. The Supreme Court found that irrelevant since the offenses committed (use of false ID-documents and illegal residence and work) were sufficient for him to be considered as a serious threat to the public order and security and be expelled with a prohibition from re-entering the country in 6 years. These two cases demonstrate a quite formalistic approach of the Danish authorities on the couple's official registration at the same address which seems to be the decisive factor. Having children does not necessarily seem to have any impact on the assessment of the duration of the relationship. In addition, it seems that condemnation for illegal residence and/or work renders the person automatically a threat to the public order and thus expellable.

Finally, EU law is very relevant in cases of *family reunification of Danish citizens in Denmark*, since the Danish immigration rules are quite restrictive, especially when compared to the more liberal EU rules. The right of Danish nationals to family reunification in Denmark pursuant to EU law is provided for in the EU Residence Order and is further implemented through practice of the Immigration Office which follows the guidelines issued by the relevant Ministry implementing the case-law of the CJEU. According to Danish practice, Danish nationals shall demonstrate that they have genuinely and effectively resided in another Member State. The Immigration Office then assesses on a case by case analysis whether this requirement is fulfilled. It is up to the applicants to choose how to prove their previous use of the right of free movement and it is difficult to know

¹⁷ The following is mainly based on C. Jacqueson, *Union citizenship – Development, Impact and Challenges, Report on Denmark*, DJØF 2014, pp. 453-455.

¹⁸ Judgment of the Supreme Court of 24/8/12 in case 58/2012, reported in U.2012.3399H.

¹⁹ The couple was not formally registered at the same address, and this might have been the decisive factor for the Western Appeal Court, judgment of 25/10/2011, S-1689-11.

upon which criteria the assessment is made. A registration certificate attesting residence in another Member State is not sufficient in itself and supplementary documentation is needed. This leaves a great discretion to the public authorities, which might be difficult to reconcile with the fundamental right of free movement and residence. Practice has been quite restrictive in respect of Danish citizens who have used their right of free movement and have settled in another Member State while not working there.

To my knowledge only one case of family reunification to a Dane pursuant to EU law has reached Danish courts.²⁰ The couple returned to Denmark after approx. 6 months in Germany where they were residing in a rented flat. The Western Appeal Court found that EU law was not applicable since the Danish national had not demonstrated that she had genuinely and effectively resided in Germany. The national court relied on the fact that the Danish national kept her apartment in Denmark while the couple resided in Germany, that she was frequently in Denmark where she worked at weekends and that the plans of setting up a pizzeria in Germany were very loose. Implicitly the ruling seems grounded in an abuse of EU law in order to circumvent the strict Danish immigration rules. It seems extremely difficult for a Danish national to demonstrate genuine and effective residence where the person has not exercised economic activity in another Member State. In other words, such residence is implicitly assimilated to an abuse of EU law regardless of whether it is genuine and effective. The Danish Appeal Court did not find it necessary to ask a preliminary question to the CJEU on the lawfulness of the Danish requirement and its application in the given case. On a final note, the Danish practice should be revisited in the wake of the Court's recent rulings in the cases *O* and *S* (respectively C-456/12 and C-457/12). In the *O* case, the Court emphasized that 3 continuous months of lawful residence in another Member States shall be regarded as sufficient for the purpose of manufacturing an EU right of family reunification upon return to the country of origin.

3.3. Current political debates on immigration and access to welfare systems

Question 5: How would you describe current political debates concerning immigration and access to welfare systems? E.g what are the main topics of the debate? What are the main concerns? What sort of policy differences are there (if any) among parties across the political spectrum? What differences are there (if any) in the debate at national and regional levels? What stance (if any) do other stakeholders such as trade unions and civil society organisations take within these debates?

Reform and modernisation of the Danish welfare State have been on the political agenda for at least two decades. The same is true of the Danes' attachment to the welfare system which has even deeper roots. As mentioned in Chapter I, marketization of essential welfare services and the limited financial resources to finance the welfare State and the public sector have long been on the political agenda. In addition, in the last few years, one of the primary concerns and debates has been on access to social benefits for Union citizens who reside and work in Denmark. Like in a few other Member States accusation that the EU free movement rules lead to welfare tourism hailed over the EU from little Denmark. In a broader perspective, it is interesting to note that this debate is not new in Denmark, but is closely linked to EU's enlargement to Eastern and Central Europe and has thus been on and off since 2004. It is also worth noting that unlike current debates in Germany, the focus is on the social rights of Union citizens who are *economically active* and thus are generally contributing to the Danish social security system through the payment of taxes. The focus is both on workers who contribute little to the Danish economy and/or for little time, as well as on those who are working full time for an average salary or above. The argument is that workers coming from other EU countries have only contributed little to the Danish welfare system, and it is *unfair* that they should have an unlimited access to

²⁰ Judgment of Western Appeal Court of 27/3/2012, B-1173-11, reported in U2012.2187V.

social benefits, for example jobseeker allowances and family benefits, from day 1. In other words, immediate access threatens the social contract on which the welfare State has been built centuries ago. Public discourse is not really concerned with access to social benefits by *inactive* Union citizens, but by those who in EU legal jargon qualify as ‘workers’. There is not much focus *yet* on the social rights of the inactive and the reason might well be that the authorities in practice do not recognize them (m)any.

In 2014, the European Commission’s alleged infringement case against the Finnish law on unemployment benefits has again brought the public’s attention to the consequences of the free movement rules and especially of the social security regulation as the Danish law is similar to the Finnish one.²¹ Especially two social benefits have been at the centre of attention of Danish politicians and the media in 2013-2014: 1) the generous Danish maintenance grant for students (known as the ‘SU’), and 2) family benefits. As already explained above, the former could only be obtained by Union citizens who had arrived to Denmark as workers (and might at times even be refused in such cases) and was refused to those who had registered as students upon arrival before finding work besides the studies. Restrictions on access to family benefits were imposed on the Liberal-Conservative government in 2010 (but first implemented in 2012) by the Danish People’s Party. The latter made the adoption of cuts in immigrants’ rights to social benefits a condition for their support of the government’s State budget.

Mainstream political parties like the Social Democrats and the Liberal-Conservative have traditionally been pro-European and strong supporters of the internal market and the principle of free movement. Yet, since 2013, the picture is more blurred as the result of the debate on the access to social benefits and the accusations of EU law leading to social tourism and threatening the very existence of the Danish welfare model. The only political party which seems unaffected in its pro-European vision and support is the Radical Left Party which forms part of the actual government (2014) together with the Social Democrats. The Danish People’s Party had 4 of its members elected to sit at the European Parliament as it had obtained 25 % of the votes at the elections to the European Parliament in 2014. The party’s most central promise up to the EP elections was to secure an exception in respect of access to social rights for Denmark. In this respect, see also the analysis below under section 4.1.

Besides political parties, trade unions have been aware of the challenges posed by EU law in terms of social dumping and social tourism, and have initiated several studies analysing the extent of the problem and proposed remedies. On a final note, in 2013 the first pro-European think tank *Europa* was created by one employers’ association and a union (www.thinkeuropa.dk).

3.4. Equality framework actively employed in EU migrants’ access to social rights

Question 6: What equality and/or human rights policy frameworks are actively employed (if at all) to address issues of diversity of needs of EU migrants and to prevent discrimination with respect to their access to social rights?

Essentially the EU framework on equal treatment is employed in assessing access to social rights by EU free movers. To my knowledge there is no recourse to human right protection, such as the right to dignity, in accessing social rights. Yet, one exception might be in respect of access to emergency health care for undocumented immigrants regardless of nationality.

²¹ A commission constituted of experts and representatives of the unions and the employers was set up in June 2014 by the government to propose how to reform the system of unemployment benefits (*‘dagpenge’*). One of the aims of the reform is to make the unemployment system ‘stronger’ in light of a more integrated European labour market.

CHAPTER 4: PUBLIC OPINION

Question 7: What are the current dominant media and public attitudes about immigration from other EU countries? Do these differ according to different 'types' /groups? (see further guidance on media analysis)

4.1. Dominant media attitudes (Annex X)

The search terms referred to in the media analysis (education, welfare, health and housing) did not give many results while one wins the jackpot when using the term 'welfare/benefit tourism'.

4.1.1. Method of the data analysis

The following analysis is based on a number of Danish newspaper articles and content of articles generated in the database Infomedia.dk selected according to specific search terms. Since there is only one Danish newspaper present in the database Nexis the search has instead been conducted through Infomedia that contains all Danish national newspapers. Generally it must be said that many articles are not very thorough in treating the topic of rights of EU citizens and the focus is often on the clash between rules of free movement and the Danish national welfare rules with no further discussion or elaboration of the rights of EU citizens.

The search results in table 1) and 2) of Annex X thus contain many articles that are only peripherally relevant to describe media attitudes on the rights of Union citizens. Likewise, many articles have doubtful relevance due to a lack of connection between the search terms and the actual content of the articles. For example, when searching on the key terms of 'education' and 'EU citizen', the term 'education' is in many instances not used in order to refer to EU rights. Yet, the jackpot is won by searching after the term '*velfærdsturisme*' (welfare/benefit tourism in Danish) with a score of 429 articles containing that term between the 15th of November 2013 and the 15th of May 2014.

The analysis is based on a yearly overview of all articles since 1990 (Table 1) of Annex X) and a monthly overview of some significant period of changes (Table 2) of Annex X). The general attitudes of articles in significant periods of changes have also been analysed (Table 3) of Annex X).

Search settings

These are the settings that were used to generate articles:

- Extended search
- National newspapers
- Time frames: 1 January X year till 1. January X year
- Variations of the search terms were not counted
- Consideration has not been given to capital letters
- All search terms occur in articles
- An article is counted if both search terms occur
- Search terms can occur anywhere in the article. Thereby articles are counted provided that each search term occurs once.
- Articles that occur more than once in a search result are counted since there is no function to exclude re-occurrences

Search terms

The search terms have been chosen out of the consideration that they yield more search results than alternatives, and that they seem to be the most appropriate Danish terms when describing rights of EU citizens in Danish.

In Danish

EU-borger + bolig
EU-borger + sundhed
EU-borger + velfærd
EU-borger + uddannelse
Velfærdsturisme

The equivalent terms in English

EU citizen + housing/house/place to live
EU citizen + health
EU Citizen + welfare
EU Citizen + education
Welfare/benefit tourism²²

Analysis of the amount of media coverage concerning some key points in time (Table 1) and 2))

The analysis focuses on selected *key periods* that are expected to generate a large amount of media coverage. These are the following:

1993: Creation of the EU - First three articles appear in 1994

2004: Expansion of the EU - Significant change in the amount of coverage in 2004. This is both before and after the date of expansion of the EU to 10 new Member States (see table 2) on 2004).

2007: A2 accession countries - No significant change in number of articles. However highest number of articles on healthcare appear in 2008 (See table 2) on 2008).

2008: Beginning of the economic crisis - No noticeable change in coverage.

2013:

1) C-46/12, LN (21 February 2013): This judgment from the European Court of Justice meant that the Danish *maintenance grants and loans for students* were now available from day 1 to EU citizens who are studying in DK if they can be considered as workers pursuant to EU law (see also above).

2) The EU Commission contacted the Danish Government in June 2013 concerning a residence requirement for obtaining *family allowances*. The Government changed practice and now administers the law in accordance with EU law. By doing so, the administration went against a legislative act that was specifically designed to limit payments to immigrants living in Denmark. This started a public debate about the future of the Danish welfare system which should allegedly be under pressure from EU law. This is shown by the rise of the number of articles containing the word welfare in connection with EU-citizen from 1 in 2012 to 6 in 2013, and then raising to 566 articles referring to the discussion on welfare tourism in 2013-2014. As can be seen in table 2) on 2013, the majority of articles on social tourism are between September 2013 and April 2014. This debate also continues in the first months of 2014 with 17 articles mentioning the term welfare and 365 referring to the term social tourism. These high numbers can also be explained by the coming-up of the elections to the European Parliament Election in May 2014.

3) *Accession of Croatia* - No article specifically referring to the accession of Croatia was found.

2014: European Parliament Election - The election was in any event likely to generate debate, but this election was specifically interesting since the debate on access to Danish welfare benefits ran from June 2013 (especially on family allowances, but not only) and thus in close connection with the election. The large

²² Search terms such as 'social dumping' and 'østarbejder' / workers from Eastern Europe were not searched but could possibly get several hits.

number of articles that comes up in the first four and half months of 2014 must be seen in light of the welfare debate described above.

The most debated topic is welfare/welfare tourism with 638 articles since 1990. Education gets 109 articles since 1990.

Analysis of the general attitude of articles (Table 3))

Articles are analysed only in significant periods of changes selected above. There is some uncertainty in the analysis due to the fact that some articles referring to the search terms only peripherally touch on the issue of the rights of EU citizens. When an article has doubtful relevance it has not been counted as either positive, negative or neutral. Thus, out of the 82 articles analysed (excluding those on benefit tourism), 30 were not grouped due to doubtful relevance. Articles referring to 'social tourism' have not been individually weighed and assessed, but are generally negatively phrased even though the media might at times try to qualify the picture and include small 'fact boxes' on the EU rights of free movement.

There is an overweight of articles with a negative attitude towards the rights of immigrating Union citizens. In the analysed sample (not including articles referring to social tourism) there are 31 negative and 16 positive articles. In 2013 all relevant articles on welfare were negative. This might be due to the debate about the change of administration of family allowances which has given rise to negative responses from a broad spectre of political parties including parties that are normally pro-European (see analysis of key point above). There has been a broad consensus that something must be done on an EU and/or Danish level to protect national regulation on welfare benefits. An example of a headline of an article grouped as negative in attitude could be: 'Danish welfare under pressure on yet another front'.

In the first months of 2014 there is an equal balance of negative and positive articles. This is the case even though the above mentioned debate is still very much active in the start of 2014, but the balance seems to be explained by positive voices gaining publicity before the EU Parliament election.

4.1.2. Analysis of the content on selected issues

The focus here is on explaining the media coverage on each of the search areas: welfare, healthcare, housing and education.

Overall picture

Issues connected to EU nationals feature quite frequently in the Danish mainstream and specialised media. Issues on EU nationals are yet generally reported under the heading of immigration where they are mostly pictured in negative terms. Media rarely refer to EU/Union citizenship as such. A search on Infomedia (media research database) reveals that the concept is not used in the Danish newspapers and the rights attached thereto are generally not mentioned. As a general rule, the Danish media do not clearly distinguish between EU citizens and immigrants from third countries. In contrast, they are mostly all together treated as 'foreigners'. Yet, there is at times a tendency of criticising specific groups of foreigners, such as those from the Central-/Eastern European countries, the Polish, Turks and so on. There is specific focus on issues of benefit tourism and social dumping, which are mainly a consequence of the application of EU law. EU citizens are therefore the target of such criticism and especially those from the poorer Central-/Eastern European EU countries.

The negative image of immigrants/EU nationals and their association with benefit tourism is to a certain extent due to the huge impact of the Danish People's party (*Dansk Folkeparti*) on the Liberal-Conservative government between 2002 and 2011 where it was supporting it, cf. above at p. 13 and attached footnote 9. Likewise, the People's Party entered into an agreement with the Liberal-Conservative government in 2008 with a view to combat the negative consequences of the *Metock* ruling (case C-127/08). Both the report and the agreement received massive media coverage. The party is still successful in drawing the attention of politicians, the media and the Danish people on the threat that EU citizens pose to the welfare state. This was most recently demonstrated in relation to the issue of student maintenance grants. The party perceived the *LN* ruling as the CJEU's unlawful intrusion into Danish sovereignty, and obtained that the numbers of applications would be closely monitored and the issue would be taken up again in the coming years.

Welfare and benefit tourism

Articles are often angled with headlines such as: 'Danish welfare under pressure on yet another front' thus creating negative connotations. Another representative negative headline is: 'Is the Danish welfare state under pressure from the outside?' Articles often see the clash between EU rules and national rules as a reason to change EU rules. EU rules are in these articles seen as an illegitimate intrusion into the decisions of democratically elected Parliament members. This view is deeply rooted and is seen in the fact that many pro-European integration parties have rallied against the consequences of EU internal market regulation on welfare. Often the cost of providing benefits in accordance with an EU rule is in focus. It is often debated that it might be necessary to change the Danish concept of the welfare system/social contract to make it adapt to the rationale of the EU internal market. Some articles concern the Government's defence of the EU rules and the argument put forward by the government that it will be able to sufficiently influence the development in the EU to such an extent as to protect Danish welfare.

2013 was the year where politicians and the press were shocked by the CJEU's ruling in the *LN* case, mentioned above, entitling students who work part-time in Denmark to student maintenance grants on an equal footing with Danish nationals. Nearly all political parties reacted negatively, and claimed that this was not an issue that the EU and the CJEU should decide upon. The general picture that emerged from the Danish media was that the Court's ruling threatened the existence of the Danish welfare State in the long run, as well as the future of Danish students. Yet two parties, the Radicals and the Social Democrats claimed afterwards that this supposed threat was largely overstated as numbers did not predict a high increase in the amount of entitled students from other Member States. From the summer 2013 to the elections to the European Parliament, newspapers have literally been filled with articles on EU migrants, especially those from Central-/Eastern Europe, accused of being benefit tourists and the alleged threat upon the existence of the Danish welfare system that they constitute. Focus was essentially on the government's proposal to amend the law on family benefits which required two years residence in Denmark for payment of the full benefit. The government was thereby reacting to a claim from the European Commission concerning the compatibility of this requirement with the regulation on the coordination of social security. Yet, this proposed amendment led to virulent counter-attacks by several political parties and a majority couldn't be found. Yet, the government has ordered the payment agency to enforce the EU-rights of EU-migrants, but this showed in practice to take some time.

Looking back in time, since the enlargement of the EU to the 10 new Member States in 2004, the issue of benefit tourism has been on the agenda of both politicians and the media. The discourse revolves around the distinction between 'us' and 'them', where EU-nationals – especially those from the Central-/Eastern European countries – are portrayed as people who mainly come to Denmark to benefit from its generous social system, such as family and employment benefits. A few politicians refuted this assumption and in the autumn 2013, the media timidly qualified the picture by quoting experts' views that there is no evidence that people move to

get access to state benefits. Also the Commission's report counteracting the widespread notion of welfare tourism within some member states received some media coverage.²³ Yet, media focus is still on EU-nationals from poor countries contributing little to the Danish welfare State or for little time and filling their pockets with state money. In 2013, the Ministry for Europe proclaimed that he would look at each social benefit and assess which safeguards could be put into place. In this respect Denmark joined the club of countries comprising the UK, Germany and The Netherlands which are actually putting pressure on the EU to protect themselves against what they call 'poverty migration'.

In respect of the other search terms, a majority of articles under housing, healthcare and education does not touch directly upon EU rights, but have other focuses. Articles on family reunification are common to all search areas.

Housing

Many articles here are not relevant concerning the EU right to have access to housing, but many of those articles touch upon the right to family reunification. This is in connection to the fact that it is common in Denmark for some couples to move to Sweden in order to manufacture a right to family reunification pursuant to EU law on their return. Some articles touch upon the fact that the couples need to have a house in Sweden in order to make use of the EU rules. Some articles also touch upon the Danish national conditions for family reunification, which among other things contain a condition about a 'suited place to live'.

Healthcare

The coverage is both negative and positive as seen in table 3). Positive articles often criticise the Danish administration and its lack of ability to inform about EU citizens' rights to healthcare. Some articles relate to food safety regulations.

Education

Articles focus on Danes abroad that are trying to get their education acknowledged. These are often negative and focus on problems. These problems also entail Danish administrative barriers when trying to export the Danish student maintenance grant. Some articles treat the strict Danish immigration rules that hinder the homecoming of Danes that have completed educations abroad and want to bring their families to Denmark. Articles also touch upon the debate about whether or not the Danish state can afford payment of maintenance grants to immigrating EU citizens that choose to take an education in Denmark. This topic gradually intensified after 2010 and takes up a lot of space in the debate. In this respect, the articles mainly focus on the cost to society and not the other side of the coin.

Concluding remarks: current dominant opinion in the media

As seen from the above analysis, the current focus in the Danish media is negative when covering themes concerning rights of EU citizens. There is generally little focus on the rationale of EU free movement rules and much focus is on the extra cost caused by an increasing number of EU immigrants. The perspective is therefore whether it will be possible in the future to sustain Danish welfare under EU rules of free movement. A word often used in the debate is in this regard: 'welfare tourism'. This general negative tendency has intensified with discussions on maintenance grants for students in 2011 and with the discussions on family allowances in

²³ European Commission, *Impact of mobile EU-nationals on national social security systems*, 14th October 2013.

2013/14. This negative view on rights of EU citizens is often directed towards immigrants from Eastern European countries.

4.2. Public opinion

Question 8: What information is available about public attitudes to issues of migration from the EU e.g the European Value Survey; the European Social Survey; National public opinion/social surveys?

A survey conducted in 2013 shows that 62 % of Danes think that EU membership is ‘very good’ or ‘good’ for Denmark.²⁴ The survey does not touch upon the attitudes toward rights of immigrating EU citizens and the consequences of free movement. However it is referred to here in order to show that there is no overwhelming EU scepticism in the population.

The European Value Survey (EVS) contains some information about EU fears in the population. Only 8.7 % of the test population say that they are ‘very much afraid’ of the loss of social security on a scale from 1 to 10, where 1 is ‘very much afraid’ and 10 is ‘not afraid at all’. 36.5 % answered within the range of 1-4. A recent opinion analysis (2014) showed that approx. 60 % of the Danes agreed that migrant workers should *not* have access to social benefits such as family benefits. A similar analysis made by the Danish periodical ‘*Ugebrevet A4*’, showed that a vast majority of the interviewed were negative or very negative towards the EU granting the possibility to workers of receiving social benefits outside their state of origin.²⁵

Most surveys about attitudes to immigration contain information about the attitudes towards non-European immigrants and not EU-citizens. The think tank *Europa* has been established in 2013 with a pro EU-agenda seeking to nuance the debate and come up with constructive solutions.

²⁴ The Danes and the EU (*‘Danskernes og EU’*), analysis of Danes’ opinion of the EU made by Megafon on behalf of two employers’ organisations, Think Tank Europa, September 2013.

²⁵ Ugebrevet A4, *‘Danskernes holdning til at modtage sociale ydelser i andre EU-lande’*, 20th of March 2013.
bEUcitizen - Grant Office REBO,
Drift 15, 3512 BR, Utrecht, The Netherlands
Coordination.team@beucitizen.eu, www.beucitizen.eu

CHAPTER 5: RIGHTS TO SUBSISTENCE BENEFITS

Question 10: Which types of subsistence benefits exist in your country?

5.1. Types of subsistence benefits in Denmark

By subsistence benefits, I refer to benefits which are intended to act as an *income replacement* enabling individuals to support themselves. Such subsistence benefits can either be temporary or permanent. Likewise, they can either be privately funded (at least partly), and thus closely connected to a work situation, or they can be mainly publicly funded through general taxes.

Temporary subsistence benefits

In case of temporary lack of income due to sickness, maternity/paternity or unemployment, benefits are paid to the individuals provided that a prior attachment to the labour market can be demonstrated, and in case of employment benefits prior insurance is required. There is an upper limit to these benefits meaning that most people will experience a severe cut in income. If the conditions for obtaining one of the benefits mentioned above are not fulfilled, one might be entitled to the *minimum means of subsistence/social assistance* ('*kontanthjælp*') already mentioned above in chapter 3, which is financed and administrated by the State. The '*kontanthjælp*' is provided with the main goal of enabling the applicant to be self-supporting. There is a requirement of not having any means/fortune such as property and savings or a spouse who can provide for the person's needs. In theory, but not in practice, it is a short term benefit and persons that have permanently lost their ability to work should thus be transferred to the pension system. If the recipient has an ability to work, the benefit is conditional upon participation in welfare to work programmes (active labour market policy). Finally one could mention the student maintenance grant (*SU*) helping students to support themselves while they study even though it is generally seen as a support benefit rather than a subsistence benefit/replacement benefit.

Permanent benefits

There are two main pension benefits financed by the State: early retirement pension and general retirement pension (which can under certain circumstances be granted before the general retirement age which is now 67, where it is then known as '*efterløn*'). The early retirement pension ('*førtidspension*') is conditional upon the loss of ability to work to such a degree that recipients will not be able to regain the ability to support themselves. The ordinary pension, '*Folkepension*', financed through general taxes is obtainable by any citizen who can demonstrate 40 years of residence on the Danish territory at the age of 65/67. Periods of residence inferior to 40 years might give rise to a pro-rata Danish pension. On top of that pension, most persons who have been into work have a labour market pension financed by themselves and their employer, which is strictly regulated by the state.

Focus in the following will mainly be on the minimum means of subsistence/social assistance for those who cannot support themselves and cannot be supported by their spouse ('*kontanthjælp*').

5.2. Differentiation on grounds of residence

Question 11: In what ways (if at all) do the national or local regulations distinguish between nationals and 'foreigners' and on which grounds? (e.g. duration of residence, nationality, family ties, age etc.)

Question 12: Can you outline any time frames for exclusions from benefits?

Question 13: Does your country differentiate benefit levels or benefit conditions (for instance social assistance, old age benefits, student grants) according to the nationality of the claimant concerned?

At the outset, no subsistence/social benefit seems to be reserved exclusively to Danish nationals. Yet, as mentioned in previous sections, the law might differentiate on grounds of residence. They might often require a certain number of years on the Danish territory or the benefit might not be 'exportable' to other countries.

As the Act on Active Social Policy provides for social assistance/minimum means of subsistence to all persons in need that are lawfully residing in Denmark, an amendment to the Act was inserted in 2004 as a result of the EU's enlargement to the 10 new Member States. It excludes short-term residents and jobseekers from entitlement to public support except from financial help to get back home. The rationale is that pursuant to EU law, such persons are supposed to be self-sufficient and are therefore not entitled to any financial support from the State. The Act explicitly excludes them from the entitlement to a non-contributory social benefit ensuring a minimum means of subsistence ('*kontanthjælp*'). This exclusion of first-time jobseekers seems to conflict with the Court's rulings in *Collins* (case C-138/02) and *Vatsouras* (case C-22/08). Indeed, this benefit can be assimilated to a jobseeker allowance since it is conditional for those who are fit for work upon the person being available for work and actively looking for employment. Therefore, it fulfils for those persons the condition in the Court's case-law of being a benefit facilitating return to the labour market and should thus be available to all those who can demonstrate a sufficient link to the Danish labour market. Yet, this is not the position adopted by the legislator and the Ministry of Employment which administrates the Act.

In addition, as mentioned above, between 2002 and 2011, the minimum means of subsistence ('*kontanthjælp*') was conditional upon a residence requirement in Denmark in 7 years out of the last 8 years. This requirement was especially targeted at non-Danish nationals, but was neutrally framed as it applied to all regardless of nationality. Citizens who had settled in Denmark for less than 7 years could only claim a reduced minimum means of subsistence known as the '*starthjælp*'. The law was amended by the Social Democrat government in 2011, where both the residence requirement and the '*starthjælp*' were abolished.

Payment of the full general retirement pension, '*Folkepension*', is as already mentioned conditional upon 40 years of residence in Denmark. Reduced period of residence might give rise to a reduced pension. According to the Act on pensions, 3 years of residence in the country is required for opening up to the right to pension, but for Union citizens it is limited to 1 year, and periods of residence in other Member States shall be taken into account in this respect. This seems to comply with the EU Regulation on coordination of social security.

Finally, the student maintenance grant known as the '*SU*' is in principle reserved to Danish nationals. Union citizens might have access to it if they work besides their studies or after a period of 5 years. In addition, the *SU* might be exported for studying in other Member States provided that the student has resided in Denmark for a period of two years within the last 10 years or upon demonstration of a link to the country by other means.

5.3. Obstacles to access to subsistence benefits in practice

Question 14: Are there any identifiable restrictions in practice on EU citizens entering the country with respect to their access to subsistence benefits (mentioned in 13) compared to national citizens? If so, can you outline what these are? E.g. language barriers, no permanent address, no access to application offices/bureaus, discrimination, etc.

As already touched upon above, one of the major obstacles to access to social rights is the lack of a cpr. number and/or health card as the case may be. In practice, the equation is as follows: no cpr. number, no rights. A cpr. number can only be obtained upon proof of residence/address in Denmark besides the registration certificate or residence card. One has to document 'permanent' residence by for example showing a letter from the landlord, a rent contract or utility bills. Those migrants, who cannot document permanent residence, are left at the margin of society. No number, no rights, seems to be the attitude of the Danish authorities. As a consequence, 'undocumented' migrants are per definition excluded from access to public support - except from the help to get home - and from access to basic facilities such as opening a bank account, having a phone and access to jobs.²⁶ Absence of documentation is synonymous with unlawful residence and no further enquiry into whether this is really the case is made. Such practice has especially a negative effect on students, who have enrolled for studies in the capital city, but who have not been available to find 'permanent' accommodation due to a shortage in student accommodation. As mentioned above in chapter 3, this position from the Danish authorities has also affected migrant homeless citizens, who have been denied access to public shelter. One could argue that this might not only infringe EU law and the EU Citizenship Directive, but also the protection of human rights such as the right to dignity.

Entitlement to social benefits for all Union citizens residing for more than 3 months, who are not workers or self-employed, shall be assessed case by case. As mentioned above, according to the Act on Active Social Policy, all persons lawfully residing in Denmark are entitled to social assistance/minimum means of subsistence, if the conditions for obtaining the benefit are fulfilled. The question would therefore be whether the Union citizen is lawfully residing in Denmark. Since there is only very limited case-law and practice available on the issue of social benefits to non-economically active Union citizens, it is difficult to assess whether their rights are actually effectively protected.²⁷ According to a report on migrant workers' access to social benefits from the Ministry of Employment of 2013, 4 400 EU citizens were receiving social assistance in 2012.²⁸ Yet, the report also emphasises that the proportion of recipients of social assistance between the age of 16 and 66 coming from other EU countries is lower than the general proportion of social recipients in Denmark. Finally, receipt of social benefits might after some time lead to termination of the right of residence of the Union citizen, where it is also difficult to assess how this issue is dealt with in practice.

Question 15: What is the relationship between claiming social assistance and the right to reside in your country? Can persons be expelled if they claim benefits? What practices are followed and what are the current debates on this issue?

²⁶ Those who are working in Denmark for less than 3 months might obtain a tax number from the tax authorities which might be sufficient to open a bank account in Denmark. But this seems to be much more complicated in real life!

²⁷ See decisions of the Appeal Tribunal for Social and Employment Affairs ('Ankestyrelsen') A-191-11 of 8/9/1 and A-27-07 of 27/11/07.

²⁸ 'Beskæftigelsesministeriets notat om Vandrende arbejdstageres rettigheder under Beskæftigelsesministeriets ressort', December 2013'.
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As mentioned above, social assistance and benefits are conditional upon lawful residence and this is not always enough. Indeed, Union citizens residing in the country for less than 3 months and first-time jobseekers are automatically excluded from the benefit.

Decisions refusing or terminating the right of residence on the specific ground of lack of sufficient resources can only be taken within the *first 3 months of arrival* and by administrative decision.²⁹ This possibility is regulated in the Aliens Act.³⁰ According to *Udenfor*, a Danish NGO dedicated to the protection of homeless people, 278 EU-nationals were expelled on grounds of lack of sufficient economic resources between the 1st of January 2009 and the 30th of June 2011.³¹ Still according to the NGO, a person who was in possession of less than DKK 350/35 Euros (corresponding to the price of a night at a hostel) was regarded as lacking sufficient resources and was expellable. A Briefing Note of 2011 from the Ministry of Integration referring to Art. 14 of the Citizenship Directive and the *Grzelczyk* ruling (case C-184/89) seems to have put an end to this practice.³² It follows, that expulsion on grounds of lack of resources within the first 3 months can only be the consequence of the person requesting economic support from the State and that this in itself is not sufficient. The authorities have to assess on the basis of the personal circumstances of each applicant whether the person is an unreasonable burden. This can never be the case upon the person's first application for social benefits.

In respect of Union citizens and their family members who have *resided for more than 3 months* in Denmark, their right of residence might be terminated where they no longer fulfill the conditions for residence pursuant to EU law. The Aliens Act stipulates that illegal residence is a ground for expulsion.³³ It might thus be that certain persons are expelled on the ground that they cannot be considered as economically active and do not fulfill the condition of self-sufficiency. There is no reported case-law on this point concerning Union citizens. On the other hand, some expulsions on grounds of protection of the public order are inherently linked to economic considerations. For example, fines for minor offenses, such as 'squatting' have justified expulsion on grounds of protection of the public order, but were subsequently annulled by the Supreme Court, cf.³⁴ Yet, there is evidence that expulsion on economic considerations has found place in respect of EEA citizens on the basis of the Nordic Convention.³⁵ This convention secures an extended right of free movement to the citizens of the 5 Nordic

²⁹ The following is taken from C. Jacqueson, 'Union citizenship – Development, Impact and Challenges, Report on Denmark', DJØF 2014, especially at pp. 456-457.

³⁰ Sect. 28 of the Aliens Act of 2013. In respect of jobseekers, the limit is 6 months or more provided that they can document that they are actively looking for a job and have serious chances of obtaining one.

³¹ THE NUMBERS ARE BASED ON THE STATISTICS OF THE DANISH IMMIGRATION SERVICE, SEE BENEDICTE OHRT FEHLER, UDENFOR, 'FORMANSKABET BØR SÆTTE FOKUS PÅ HJEMLØSE EU-BORGERE' ('THE EU PRESIDENCY SHALL FOCUS ON HOMELESS EU-CITIZENS'), OF 6/12/2012 ON [HTTP://UDENFOR.DK/DK/MENU/OM-PROJEKT-UDENFOR/DET-MENER-PROJEKTUDENFOR/FORMANSKABETBORSETTEFOKUS-PA-HJEMLOSE-EU-BORGERE](http://udenfor.dk/dk/menu/om-projekt-udenfor/det-mener-projektudenfor/formanskabetborsettefokus-pa-hjemlose-eu-borgere)

³² Briefing Note of the Ministry of Integration of 30/6/2011 mentioned in footnote 12.

³³ See Sect. 25(b) of the Aliens Act of 2013.

³⁴ Judgment of the Supreme Court of 31/3/13 in case 264/2010, reported in U.2011.1794H.

³⁵ See Kirsten Ketscher, 'Hjemsendelse af Nordiske borgere - en kritisabel dansk praksis', in *Undring og Erkjennelse*, Karl Harald Søvig, Sigrd Eskeland Schütz og Ørnulf Rasmussen (red.), Fagbokforlaget 2013, 279-291. The author reports two cases, one concerning an Icelandic pregnant woman who had resided over 1 year in Denmark where she was living with her husband and had partly worked and partly received social help. She was refused a minimum means of subsistence, and was asked to leave the country. The other case concerned a Swedish national who suffered from psychological diseases linked to her previous situation as a Palestinian refugee. Pursuant to a court order, she had to leave the country as she was not self-sufficient and did not fulfill the condition of 3 years residence in Denmark pursuant to the Nordic Convention.

countries members long before the Citizenship Directive. Since EEA citizens are also protected by the Directive, their expulsion should have been assessed in this light and might conflict with it. Finally, a recent practice of the Danish police, especially targeted at Roma people, is to issue them with fines for illegal residence if they do not have a registration certificate after the first 3 months of their stay, and retaining them until they have paid their fine. The ground for retention is to facilitate deportation, but the persons are in practice released upon payment of the fine.³⁶

Finally, it is still unknown whether the European Court of Justice's recent case-law in C-140/12, *Brey* and C-333/13, *Dano* will have an impact on the current practice in Denmark.

Question 16: In what ways (if at all) were national laws amended when the 'Residence Directive' had to be implemented in your country? What were the effects on immigration policy? How (if at all) have the equal treatment provisions of the directive also led to changes in legislation?

Question 17: What impact do such restrictions have on EU citizens' entitlements to support while resident in the country? E.g impact for a person in need a) during the first 3 months; and b) between 3 months and 5 years.

The EU-residence order was amended as to ensure the right of residence of 'inactive' Union citizens and their family members as well as the formalities attached thereto. From 2004 onwards, Denmark witnessed a boom in immigration from the then 10 new Members from Eastern and Central Europe, cf. questions 1-3.

Strikingly, Art. 24 of the Directive was not transposed into the EU Residence Order. Yet, the exceptions to the principle of equal treatment provided for in its Art. 24(2) are explicitly or implicitly implemented in existing Acts.³⁷ The exception in respect of *students* was implemented through an amendment of the Students' Grants and Loans Scheme Act which excludes nationals from other Member States who are not workers or family members from the entitlement to student grants and loans within the first 5 years of residence.³⁸ Until 2013 Union citizens *who worked in Denmark along their studies* were not entitled to the grant. On several occasions, the Danish authorities refused to recognize them as workers, especially if they had first arrived to enroll for a study. They were considered as students and thus not entitled to maintenance help pursuant to Art. 24(2) of the Directive. In a way, the authorities relied on the intention of the Union citizen: arrival with the purpose of studying in Denmark disqualified them as workers. The Danish Ombudsman reacted to this uncertain practice of the authorities and of the Appeals Board for the Students' Grants and Loans Scheme recalling their EU law obligations. The Appeals Board then asked the ECJ whether full-time students who are working along their studies should be regarded as workers and should thus be entitled to the student grant on an equal treatment basis. The Danish government argued that with the adoption of the Directive, the EU legislator intended full-time

³⁶ Information gathered from the Danish Charity organization, DanChurchSocial (*Kirskens Korshær*).

³⁷ The remaining of the answer builds on C. Jacqueson, 'Union citizenship – Development, Impact and Challenges', Report on Denmark, DJØF 2014 at pp. 460-462 and Jacqueson, 'From negligence to resistance – Danish residence schemes in the light of EU free movement law', (2016) EJSS (forthcoming).

³⁸ See *inter alia* Sect. 2a in the Act on the Students' Grants and Loans Scheme No 661 of 29/6/2009 (*LBK om statens uddannelsesstøtte (SU-loven)*) amending Act No 448 of 1995 with further amendments (*Lov om Statens uddannelsesstøtte med senere ændringer*).

students to be covered by the exception to the principle of equal treatment in the Directive.³⁹ The Court disagreed in the *LN* case and practice was changed in this respect.⁴⁰ The *LN* ruling came as a shock for politicians and reactivated in the media fears of social tourism with its waves of students especially from Eastern EU-countries invading Danish universities.

In respect of social benefits, it is clear that Union citizens and their family members have no such entitlement within the *first 3 months* of their stay and for longer when the Union citizen is a *first-time jobseeker*. As the Active Social Policy Act provides for public support to all persons in need that are lawfully residing in Denmark, an amendment to the Act was inserted in 2004 as a result of the EU's enlargement to the 10 new Member States. It excludes short-term residents and jobseekers from entitlement to public support except from financial help to get back home.⁴¹ The rationale is that pursuant to EU law such persons are supposed to be self-sufficient and are therefore not entitled to any financial support from the State. The Act explicitly excludes them from the entitlement to a non-contributory benefit ensuring a minimum means of subsistence (*kontanthjælp*). This exclusion of first-time jobseekers might have conflicted with the Court's rulings in C-138/02, *Collins* and C-22/08, *Vatsouras* (case). Indeed, this benefit could have been assimilated to a jobseeker allowance since it is conditional upon the person being available to work and actively looking for employment. Therefore, it fulfilled the condition in the Court's case-law of being a benefit facilitating return to the labour market and should thus have been available to all those who could demonstrate a sufficient link to the Danish labour market.⁴² But the Court recently revised this case-law in *Alimanovic* (case C-67/14). It defined broadly the concept of social assistance as encompassing also benefit schemes for jobseekers which have the dual purpose of both covering the minimum subsistence costs for enjoying a life in dignity and facilitating the search for employment. Thus while the approach adopted by the Danish authorities could be seen as defiant of the Court's previous case-law, one could now argue that they were just being 'clairvoyant'.

Question 18. What policy is followed in practice for (i) an EU Citizen applying for subsistence support? (ii) an EU worker claiming social assistance? What (if any) practical obstacles are these persons likely to meet?

Union citizens who can qualify as workers or self-employed pursuant to EU law have access to social assistance on an equal treatment basis if they fulfil the conditions thereof (cannot provide for their own needs, and have no spouse/partner who can and have no fortune). Yet, the Danish authorities might have a more restrictive notion of the concept of worker than the Europe Court of Justice which might constitute a hindrance for those Union citizens. Likewise, it is uncertain how long Union citizens can retain their status of worker or self-employed for the purpose of claiming social assistance.⁴³ Finally, it is still unknown how the Danish authorities will assess the Court's rulings in cases C-507/12, *Saint-Prix* and C-67/14, *Alimanovic* and their definitions of the concept of worker which are to a certain extent conflicting.

Entitlement to social benefits for all Union citizens residing *more than 3 months who are not workers or self-employed* shall be assessed case by case. As mentioned above, according to the Active Social Policy Act, all persons lawfully residing in Denmark are entitled to public support if the conditions for obtaining the benefit are

³⁹ See further C. Jacqueson, 'For better or for worse? Transnational solidarity in the light of Social Europe' in *Resocialising Europe in times of crisis*, CUP, October 2013.

⁴⁰ Case C-46/12, *LN*. Negative decisions within the last 3 years can be reassessed in the light of the ECJ's ruling.

⁴¹ Act No 282 of 26/4/2004 inserting Sect.12a in the Act No 455 on Active Social Policy of 1997 (*Lov om aktiv socialpolitik*).

⁴² Kirsten Ketscher, *Socialret – principper, rettigheder, værdier*, 3rd ed., DJØF 2008 at p. 251 and Catherine Jacqueson, 'Unionsborgerens ret til sociale ydelser – Hvilken vej blæser vinden?' EU-ret og Menneskeret, June 2010 at p. 162.

⁴³ See for example K. Ketscher, *Socialret – Principper, rettigheder, værdier*, 4. udg. (2014) DJØF at p. 325-327.

fulfilled.⁴⁴ The question would therefore be whether the Union citizen is lawfully residing in Denmark.⁴⁵ This issue has especially been salient in Denmark in respect of homeless persons who are nationals of other Member States concerning their access to shelter homes. According to Danish law, shelter homes which are to some extent State-funded shall only accept persons who are legally residing in the country. In practice, lawful residence has in this respect been interpreted restrictively as excluding undocumented citizens (i.e. those who do not have a registration certificate, a residence card or a Danish health card).⁴⁶ Such interpretation conflicts with the Directive as (1) all EU-nationals have an unconditional right of residence within the first 3 months and beyond when the person is actively looking for employment (without registration document) and (2) the registration certificate is not constitutive of the right of residence which might be documented by other means. The authorities' underlying rationale is that such persons are in any event not lawfully residing in Denmark since they are requesting public support by using shelter homes. They thus do not fulfill the condition of self-sufficiency and are a burden on the social system. This rationale seems to conflict with the Directive, especially with its Art. 14.⁴⁷

Question 19. What type of support is available if subsistence benefits are refused (in case of nationals; in case of EU-nationals; in case of third country nationals?)

Pensioners who are not eligible for a full social pension in Denmark may be entitled to social assistance which is then at a maximum set at the level of the social pension for a married person (which is lower than the level of social assistance).⁴⁸ For all citizens in need regardless of nationality, additional benefits such as contribution to single-item expenses, to pharmaceuticals and dental treatment can be granted on a discretionary basis by the municipality pursuant to the Active Social Policy Act and may therefore vary upon the place of residence.⁴⁹ Yet, help to the poorest in society has dramatically shrunk over the last years.⁵⁰ Anyway in practice in most cases, in respect of foreigners who are refused social assistance, the only help they would get is help to return home.

Yet Citizens who are lawfully residing in Denmark might be entitled to other statutory benefits independently from the issue of social assistance. For example, they might fulfil the conditions for obtaining housing benefits, family benefits and child care allowances when raising children at home.

⁴⁴ Sect. 3 of the Aliens Act of 2013.

⁴⁵ See decisions of the Appeal Tribunal for Social and Employment Affairs (*Ankestyrelsen*) A-191-11 of 8/9/11, A-27-07 of 21/11/07.

⁴⁶ Information gathered from the Danish Charity organization, DanChurchSocial (*Kirkens Korshær*). In January 2013, the organization opened up a shelter home for homeless foreigners. 2/3 of the users are from EU-countries and 1/3 comes from Romania. Most of the users ask for help in understanding and accessing the Danish labour market. For more information, see (in Danish): <http://www.kirkenskorshaer.dk/nyheder/flere-fattigdomsmigranter-s%C3%B8ger-r%C3%A5dgivning>

⁴⁷ It also conflicts with the Ministry of Justice own Briefing Note of 2011, on the possibility of expelling Union citizens who are requesting public support.

⁴⁸ *Report on residence requirements for foreigners' access to Danish welfare services*, ('Rapport om optjeningsprincippet ift. danske velfærdsydelse'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelse'), p. 119-120.

⁴⁹ *Report on residence requirements for foreigners' access to Danish welfare services*, ('Rapport om optjeningsprincippet ift. danske velfærdsydelse'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelse'), p. 126-127.

⁵⁰ Ugebrevet A4 (2015).

Question 20. How long can an EU citizen claim benefits before expulsion?

Question 21. Is there national case law on these issues? Eg. Has EU law been invoked (e.g. Residence directive, case law on article 18 TFEU, Regulation 492/2011, art. 45 TFEU) and, if so, in what ways?

As mentioned above in answering question 15, there is very little case-law on the issue of expulsion on grounds of becoming an unreasonable burden, so it is difficult to access when the ‘invisible’ line is crossed and expulsion is ordered.

According to the Note of the Ministry of Integration of 2011, a first application will never lead to expulsion. When social assistance or benefits have first been attributed, it will depend on a case by case assessment when they will have to be stopped and the citizen asked to leave.

Question 22. Are there subsistence benefits (as mentioned in 13) payable to persons who left the country? Which provisions apply in that case?

Social assistance is a benefit which is conditional upon residence in Denmark and which is non-exportable. In contrast, social pensions are covered by social security regulation 884/2004 and are exportable. The scheme for early retirement is seen as social advantage pursuant to Regulation 492/2011 on free movement of workers. Yet, Denmark has accepted that it can be paid while residing in other countries as it would otherwise constitute an indirect discrimination on grounds of nationality.⁵¹ Finally, study maintenance grants can be exported to other Member States upon certain conditions, see below under question 46.

5.4. Third country nationals’ access to subsistence benefits

Question 23: What access (if any) do legally residing third country nationals have to subsistence benefits?

Since Danish law is essentially focusing on lawful residence for access to subsistence benefits, third country nationals also have access to social benefits on an equal treatment basis, such as social assistance/minimum means of subsistence. Yet, they might in certain circumstances be less favourably treated than Union citizens and their family members. For example, where the law imposes a residence requirement, this might be lifted

⁵¹ See Jacqueson, From negligence to resistance – Danish residence schemes in the light of EU free movement law, (2016) EJSS (forthcoming).

for Union citizens (like the case of the general retirement pension and family benefits), but not for third country nationals, see further the discussion above under section 5.2. In addition, here again the nub of the issue is whether they are lawfully residing in the country and have a cpr. number/health card.

CHAPTER 6: RIGHT TO HEALTH

The Act on Health defines the requirements for the health system in order to ensure easy and equal access for all, while respecting each individual's integrity and autonomy. All persons residing in Denmark (meaning those who have registered and thus have a cpr. number providing them with a Yellow Health Card) have full access to health services. This includes free access to private practicing medical doctors, both general practitioners and specialists as well as to hospitals. Treatment at the dentist, physiotherapist, chiropractor, foot specialist and psychologist is paid by the patient with some support from the public health system. In addition, Union citizens might also have a right to treatment in Denmark pursuant to EU law even though they do not reside there (Blue EU Health Card). Finally, everyone – including foreigners regardless of nationality – is entitled to receive emergency hospital care in Denmark regardless of residence (for example, as a result of a road accident, suddenly arisen illness, birth, or a chronic illness that worsens). Emergency hospital care may also necessitate that the person remains under hospital care if it is assessed that the treatment cannot be received in the country of origin or the person cannot be moved. In this case the region in question might ask for payment or provide it for free when this seems fair in respect of the given circumstances.⁵² On a final note, the hospital sector has been subject to certain degree of liberalisation, since the beginning of the millennium with patients being treated at private hospitals on behalf of the state when the public sector cannot not provide the requested treatment within due delay. Likewise, there has been an increase in the number of private health insurances and the number of treatments provided by private hospitals.⁵³

6.1. Access to health care of EU citizens in Denmark

Question 24: What information (if any) is available on the following issues?:

- ☐ *The use of health care of EU citizens from other countries in your country*
- ☐ *Ease of access to health services of your country by EU citizens from other countries*
- ☐ *Access to insurance for health care in your country by EU citizens from other countries*
- ☐ *Any particular health needs of /increased likelihood of use of particular health services by EU citizens from other countries e.g. for maternity services*
- ☐ *How health systems in your country use this information (if at all) in order to plan health services accordingly?*

⁵² Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. dansk velfærdsydelse'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelse'), p. 138.

⁵³ See further, U. Neergaard and C. Jacqueson, 'Liberalisering af det danske hospitalsvæsen i et EU-retlig lys' (Liberalisation of Danish hospital care in the light of EU-law), in 'Den nordiska välfärden och marknaden' (The Nordic welfare model and the market),ustus Forlag 2011, pp. 133-165, and M. Hartlev og C. Jacqueson, 'Frit valg på alle hylder? Ret til hospitalsbehandling i dansk og EU-retlig belysning' (Free choice: the right to hospital care in the light of Danish and EU-law), in 'Frit valg – Velfærd i den Europæiske Union' (Free choice – Welfare in the EU), DJØF 2011, pp.93-120.

Data on foreigners' use of hospitals and private practices in Denmark is available for 2006.⁵⁴ In 2006, approx. 3.3 % of patients staying overnight at a hospital were foreigners (1 % from EU countries, 1.5 % from 1/3 countries and 0.8 % were refugees).⁵⁵ Out of the 4.7 million persons that went to the doctor in 2006, it is alleged that 207 000 were foreigners. In addition, 4.3 % of the total of expenses to medical doctors (including those to on call doctors and translation) were used on foreigners.⁵⁶ These figures seem only to take into account foreigners residing in Denmark.

In 2014, the Think Tank *Europa* could document that very few EU citizens living abroad had received a *scheduled treatment* at a Danish hospital.⁵⁷ The analysis is based on enquiries to the 5 Danish regions and not all had registered the numbers of patients from abroad. Region of Mid-Jutland could document that 3 patients from other EU countries had received treatment at the region's hospitals and 11 had enquired about the possibility of receiving treatment. Region Zealand had treated 4 EU patients residing abroad between 1st of January and September 2014. With the implementation of the Patients' Rights Directive (Directive 2011/24) at the end of 2013, Denmark has ensured that Danish hospitals upon payment can treat people for scheduled operations even if they do not have a Danish health card and have not requested emergency treatment pursuant to the Blue EU Health Card. This did not seem to be the case before the implementation of the Patients' Rights Directive as Danish hospitals were prohibited from receiving payment. Some basic information on access to paid health care in Denmark for migrants is given *inter alia* on the website of the Danish National Health Board in three languages (Danish, English and German).⁵⁸

6.2. Access to health care for Danes in other Member States

Question 25: What information (if any) is available on the following issues?:

- ☐ The use of health care of citizens from your country in other countries
- ☐ Ease of access to health services in other EU countries by citizens from your country
- ☐ Access to insurance for health care for citizens from your country in other EU countries
- ☐ Any particular health needs of /increased likelihood of use of particular health services by citizens from your countries in other countries e.g for maternity services
- ☐ How health systems in your country use this information (if at all) in order to plan health services accordingly?

People who reside lawfully in the country have access to free health care in Denmark upon showing the Yellow Health Card which is obtained upon demonstration of a permanent address, see above under section 5.3. In addition, those persons are entitled to necessary health care while staying temporarily in another Member State (the Blue EU Health Card). In 2008, the cost for emergency treatment abroad was 134 million kr. (approx.

⁵⁴ Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelser'), pp. 138-141.

⁵⁵ Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelser'), pp. 138-139.

⁵⁶ Report on residence requirements for foreigners' access to Danish welfare services ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011, Commission on foreigners' right to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelser'), pp. 138-141.

⁵⁷ Report on health care in other Member States ('Behandling i andre EU-lande'), 13th of September 2014, The Think Tank *Europa*, p. 3.

⁵⁸ See https://www.patientombuddet.dk/Klage-_og_sagstyper/International_Sygesikring/Nationalt_kontaktpunkt_for%20_behandling%20_i%20_EU_EOES/Adgang_til%20_behandling_i_Danmark.aspx?sc_lang=en

17 972 585 Euros) and there were approx. 46 000 claims for cover.⁵⁹ Until the 1st of August 2014, Danish patients were covered as if the treatment was received in Denmark (amounting to free treatment) if they relied upon their Danish Yellow Health Card. From that date, it is no longer possible to rely on the Yellow Card for treatment abroad, and Danish patients are covered on an equal treatment basis with the people of the host state. This means that they might have to pay some of the expenses themselves (cf. the Blue EU Health Card system) and therefore seek private insurance beforehand.

The Danish authorities have been very slow in ‘accepting’ and ‘implementing’ the case-law from the CJEU on the right to receive treatment abroad paid by the Danish State pursuant to Art. 56 TFEU. It took it more than 10 years to fully ‘accept’ the Court’s case-law in the *Kohll*, *Decker* and following cases. In fact, it is only since the implementation of the Patients’ Rights Directive in December 2013, that patients covered by the Danish health care system can freely choose to be treated by a General Practitioner established in another Member State and get the costs reimbursed afterwards. The situation is similar concerning hospital care. Not until 2008, upon pressure from the EU-Commission, did the Danish authorities put into place a procedure for obtaining a prior authorisation for treatment abroad and informed the population of its EU-right in this respect. Also the recent implementation of the Patients’ Rights Directive in respect of treatment which still might be subject to prior authorisation seems to contradict the spirit and wording of the Directive. Indeed *all* treatments which need overnight accommodation and *all* treatments which are centralised at state and regional level are exempted from the free movement rules and are subject to a prior authorisation. Concerning the latter, the national authorities seem to imply that since the listed treatments are only practiced on a little number of patients, restrictions on treatment abroad can be justified on the need for planning and especially the need for maintaining the competence of doctors. Yet, planning seems only to be one of the two conditions which must be fulfilled in order to exempt a treatment pursuant to Art. 8(2)a) of the Directive. The second cumulative condition is that the given treatment shall necessitate highly specialised and cost-intensive equipment or infrastructure or require at least one night accommodation. Therefore, it can be discussed whether the Danish practice fully complies with Art. 8(2)a) of the Patients’ Directive.

In the area of health, the Danish attitude seems to be very ‘nationalistic’ refusing as much as it can the interference from EU law. The so-called ‘Happiest People in the world’⁶⁰ seem to think that they have the best health care system in the world. This is at least the impression coming from Danish politicians where health care is to be provided in Denmark for Danes according to Danish standards.

6.3 Barriers faced by EU citizens in accessing health care in Denmark

⁵⁹ *Report on residence requirements for foreigners’ access to Danish welfare services*, (‘Rapport om optjeningsprincippet ift. danske velfærdsydelser’), March 2011, Commission on foreigners’ right to welfare benefits (‘Udvalg om Udlændinges ret til velfærdsydelser’), p. 145.

⁶⁰ Denmark is arguably the happiest nation in the world according to the 2013 Happiness Report published by the Sustainable Development Solutions Network.

Question 26: What are the likely barriers faced by EU citizens from other countries in accessing health services?

- *Entitlements according to length of time of residence*
- *Cost*
- *Ability to speak the national language*
- *Knowledge about how to access services and entitlements*
- *Practical barriers such as time/location of services*
- *Attitudinal barriers on the part of service providers*
- *Attitudinal/behavioural barriers on the part of migrants*
- *Any other identifiable constraints (insurance?)*

The most obvious barrier in Denmark is the lack of Yellow Health Card or cpr. number. Without such card or number, there is no access to treatment unless there is a need of emergency care. For example, ‘non-insured’ pregnant women only have a right to treatment for suddenly arisen illness in connection with their pregnancy and sudden birth before week 37 in the pregnancy.⁶¹ That means that doctors and other health personnel are not entitled to treat a person who cannot document being been covered by the Danish health system or needing emergency care. This situation led to the creation of 2 private clinics especially dedicated to undocumented/irregular migrants. They were the result of the cooperation between the Red Cross, the Danish Patients’ Association and the Danish Refugee Council. The two clinics, one in Copenhagen, which opened in 2011, and one in Århus, which opened in 2013, are financed by private funds.

Migrants who are covered by the Danish health system might experience problems in accessing the Danish health system due to language barriers. Therefore, pursuant to the Health Act, people in need are entitled to an interpreter for free in connection with treatment at doctor’s practice or at the hospital. From 2001, a fee is due by persons who have resided for more than 7 years in Denmark. In 2009, the total costs for interpreters (including sign language) used in the health care sector amounted to approx. 120 000 000 kr. (approx. 16 094 852 Euros).⁶²

Apparently, there are no other barriers for EU citizens in accessing the Danish health care system. Concerning insurance, settled migrants are also entitled on an equal treatment basis to contract private insurance which might guarantee quicker access to health care providers, including access to private hospitals. Some of those insurances are paid by the employer but are no longer subject to tax deduction.⁶³ Finally, EU nationals residing in Denmark may also subscribe private insurance covering part of the cost of treatments not covered by the public scheme (for example dentist, physiotherapist and psychologist).

Question 27: Are distinctions made about who has access according to e.g nationality, legal status, duration of residence, waiting times, employment status?

⁶¹ Report on health care for unregistered migrants (*‘Sundhedsydelse til uregistrerede migranter’*), Ministry for Health and Prevention, 25.9.2014, p. 6.

⁶² Report on residence requirements for foreigners’ access to Danish welfare services, (*‘Rapport om optjeningsprincippet ift. danske velfærdsydelse’*), March 2011, Commission on foreigners’ right to welfare benefits (*‘Udvalg om Udlændinges ret til velfærdsydelse’*), pp. 134-135.

⁶³ Yet, the Danish periodical, Ugebrevet A4, Ivar Houmark Andersen, *‘Flere og flere ansatte får en sundhedspakke’*, 18th of November 2014 could report that the number of health insurance paid through work by the employer and the worker has exploded during the last 3 years. Yet, those insurance seem only so far to cover so far care at specialised private practitioners and not operations.

There is no distinction in accessing statutory health care depending on nationality, legal status, employment status or residence. Indeed all citizens residing in Denmark are covered by the statutory health cover which is financed through general taxes. Yet, as mentioned above, only foreigners who are lawfully resident *and* registered in the national registry (in possession of a personal/cpr number) have access to the whole range of health care services on equal treatment with Danish nationals (meaning for free for most health services). Non-residents have access to emergency hospital care following Denmark's human rights obligations which are narrowly understood and limited to hospital treatment.⁶⁴ Besides, citizens who are covered by a health insurance in an EU-country have access to necessary treatment and scheduled treatment pursuant to the social security regulation or Art. 56 TFEU.

There might be waiting times depending on the treatment sought. If treatment cannot be provided in due time, the patient shall be granted authorisation to receive equivalent treatment in another Member State at the cost of the Danish authorities. Whether this works well in practice is another question which is discussed below under question 28. Waiting time might also be a ground for refusing to treat patients in other Member States who request scheduled treatment in Denmark.

On a final note, employer-financed health insurances have flourished in the last decade where they were at certain period exempted from taxation. Likewise treatment received at private hospitals has increased in the same period.⁶⁵ Thus patients who have private insurance might avoid waiting times and have quick access to private hospitals and clinics. In most situations, they will be persons who are on the labour market, as they are most likely to benefit from private insurance.

Question 28 What access do people have to health care outside of the country of residence?

How is the cross-border patient directives implemented in your country? Did national legislation have to be changed, and what use is actually made of the right to receive health care in another Member State and having it reimbursed by the health care bodies in your country? Is there already an influx of persons of other Member States receiving health care in your country? Are there effects on costs, planning in your country, cooperation with foreign authorities?

Until the 1st of August 2014, Denmark was more protective than required by EU law of the rights of its citizens while visiting other Member States.⁶⁶ It had in place a favourable system of compensation of the costs for *emergency treatment* for 'Danish' tourists who were covered as if the treatment was received in Denmark (amounting to free treatment) if they relied upon their Danish yellow health card. From that date, it is no longer possible to rely on the yellow card for treatment abroad, and Danish patients are only entitled to the same level of compensation than the people of the visiting host state. They might thus have to pay some of the expenses themselves (cf. the blue EU health card system) and therefore seek private insurance beforehand.

⁶⁴ See Ministeriet for Sundhed og Forbyggelse, '*Sundhedsydelse til uregistrerede migranter*' (2014). For criticism of the Danish position in the light of the UN Convention on social, economic and cultural rights, see Hartlev, M., Hybel, U. & Morten P. B., '*Sundhed og jura – Sundhedsretlige perspektiver på sundhedsvæsen, sundhedspersoner og patientrettigheder*', (2013) DJØF at p. 228-229.

⁶⁵ S. Jørgensen, and C. Jacqueson, 'Public responsibility and private action – Denmark' in Pennings, F., Erhag, T. and Stendahl, S. (eds), *Non-public actors in Social security administration – A comparative study*, (2013) Wolters Kluwer at pp.122-125.

⁶⁶ The following is based on Jacqueson, C. and Hartlev, M., '*Sygdomsbehandling i EU - en ret for de få? Om Danmarks anstrengte forhold til patienters fri bevægelighed*', (2014) 6 Juristen, pp.191-202 and Jacqueson, 'From negligence to resistance – Danish residence schemes in the light of EU free movement law', EJSS (2016) (forthcoming).

The general picture in respect of health care is that the Danish authorities have been very slow in ‘accepting’ and ‘implementing’ the case-law from the European Court that money follows the patient. They have been very sceptical towards the EU right to receive *scheduled* (not emergency) treatment abroad paid by the Danish State pursuant to Art. 56 TFEU and the free movement of services. In other words, outflow of patients has long been refused by the Danish authorities. One can identify several phases in handling EU law in this area. The first phase is one of ‘*bagatelising*’ the impact of EU law. A group of civil servants found that the Danish rules on health care cover abroad had to be adjusted following the *Kohll* and *Decker* rulings of 1998,⁶⁷ but only in so far as the Danish patients bear themselves whole or part of the costs of the treatment and the provider intends to make a profit.⁶⁸ In practice this concerned only very few treatments such as support for glasses for children, dental care and medical care for a little group of patients. The next phase was one of ‘*resistance*’ where the government tried more actively to influence the development of EU law in written and oral procedures before the European Court. For example, in *Geraets-Smits and Peerbooms* on hospital treatment, the Danish government argued that treatment which was free of charge could not be seen as a service.⁶⁹ These arguments were as we know rejected by the Court. Then started the phase of ‘*if it goes, it goes*’. In a note of 2004 from the Ministry of Home Affairs and Health, it is acknowledged that a few changes had to be made, but they were first put in place in 2008 following a letter of formal notice from the EU-Commission.⁷⁰ The time after 2008 is one of ‘*foot lipping*’. Denmark has finally accepted the interpretation of the notion of service made by the Court but has not implemented it fully. In fact, it is only with the implementation of the Patients’ Rights Directive in December 2013, that the vast majority of patients can freely choose to be treated by a General Practitioner established in another Member State and get the costs reimbursed afterwards.⁷¹ The situation is similar concerning hospital care. First in 2008, upon pressure from the EU-Commission, the Danish authorities put into place a procedure for obtaining a prior authorisation for treatment abroad and informed the population of its EU-right in this respect.

Finally the recent implementation of the Patients’ Rights Directive in respect of treatment which might still be subject to prior authorisation seems to contradict the spirit and wording of the Directive.⁷² Indeed *all* treatments which need overnight stay and *all* treatments which are centralised at state and regional levels are exempted from the free movement rules and are subject to a prior authorisation on the ground of planning concerns. Yet, planning seems only to be one of the two conditions which must be fulfilled in order to exempt a treatment pursuant to Art. 8(2)a) of the Directive. The second *cumulative* condition is that the given treatment shall necessitate highly specialised and cost-intensive equipment or infrastructure or require at least one night stay. Therefore, it can be discussed whether the Danish rules fully complies with Art. 8(2)a) of the Patients’ Directive. The Danish implementation rules seem also to fail on the requirement of providing easily accessible information of the patient on whether a chosen treatment is subject to free choice or not. The list is not very informative. First, the list is difficult to find, and second patients have to find out themselves which diseases and conditions are ‘specialised’ or ‘highly specialised’ and thereby subject to prior authorisation. This might be why the authorities advise patients in any event to request a prior authorisation to be on the safe side. Finally, a recent study shows that Denmark has not adequately implemented Art. 4 of the Directive on information of foreign patients by services providers and the obligations imposed on national

⁶⁷ Joined cases C-158/96, *Kohll* and C-120/95, *Decker*.

⁶⁸ Embedsmandsgruppen (1999), ‘*Redegørelse fra Embedsmandsgruppen til vurdering af konsekvenserne af EF-domstolens afgørelser i Decker/Kohll-sagerne*’, September 1999.

⁶⁹ C-157/99, *Geraets-Smits and Peerbooms*.

⁷⁰ Indenrigs-og Sundhedsministeriet (2004), ‘*Notat om konsekvenser af EF-domstolens afgørelser om patienters fri adgang til sundhedsydelse i andre EU-/EØS-lande*’, 22 March 2004, J.nr. 2003-10330-7.

⁷¹ Directive 2011/24 on patients’ rights.

⁷² Bekendtgørelse nr. 958 om ret til sygehusbehandling m.v., 29 August 2014.

contact points.⁷³ Indeed, on the webpage of the main national hospital in Denmark, it is simply stated that ‘Regrettably the Rigshospital does not have the necessary capacity to private and/or foreign patients, even if they are willing to pay for their treatment themselves’.⁷⁴

According to a recent study, outflow of patients is limited.⁷⁵ Over the period between the 1 January 2014 and the 20th of October 2014, 900 patients enquired before the authorities of their possibility to receive treatment abroad pursuant to EU law (the social security regulation and the Treaty/patients rights’ directive). Yet, 64 only asked for reimbursement pursuant to the patient rights’ directive (and 21 obtained it) for treatment not subject to authorisation. Concerning treatment that required prior authorisation, 61 made such a request while only 14 were successful in obtaining it. Inflow of patients for scheduled treatment is even more limited.⁷⁶ Thus free movement of patients in a Danish context does not seem to be a reality yet and therefore does not seem to have significant effects on costs and planning.

Concluding on the area of health care, the so-called ‘Happiest People in the world’⁷⁷ seem to think that they have the best health care system in the world. This is at least the impression coming from Danish politicians where health care is to be provided in Denmark according to Danish standards.

Question 28: What is the position of legally residing third country nationals in relation to access to health care?

Question 29: What is the position of family members of workers and of EU-nationals? E.g. do they have access to health care?; Are they protected when they go to another country to stay or reside? Are the relevant information and forms easily provided?

All foreigners lawfully residing in Denmark are covered by the statutory health scheme, cf. answer to question 27. This would include third country nationals, Union citizens regardless of status and their family members when they are lawfully residing and registered in the country. All citizens covered by the Danish scheme can receive treatment in another Member State pursuant to EU law. On the compatibility of the Danish rules with EU law, see answer to question 27. Finally, some limited information on the right to receive treatment abroad is available in English on the webpage of the Authority for Patients’ Safety which acts as the National Contact Point for the purpose of the patients’ rights directive. Some regions provide for more detailed information in English and other languages. Finally information can be received on request before the regional patient offices and the Safety Authority.⁷⁸

⁷³ D. S. Martinsen and N. Vasev, ‘A difficult encounter- National health care models and the EU’, 49 Social Policy and Administration (2015) at 435-436.

⁷⁴ *Ibid.* at 435.

⁷⁵ D. S. Martinsen and J. A. Mayoral Diaz-Ascensio, ‘A judicialisation of health care policies in Denmark and Spain’ (2015) Working Paper No 30, i-court, Copenhagen, Denmark, at p. 20, http://politicalscience.ku.dk/staff/Academic_staff/?pure=files%2F143050793%2FMartinsen_MayoralicourtsWP2015.pdf (last visited 14 December 2015).

⁷⁶ D. S. Martinsen and N. Vasev, ‘A difficult encounter- National health care models and the EU, 49 Social Policy and Administration’ (2015) at 435-436.

⁷⁷ Denmark was arguably the happiest nation in the world according to the 2013 Happiness Report published by the Sustainable Development Solutions Network.

⁷⁸ https://www.patientombuddet.dk/Klage-_og_sagstyper/International_Sygesikring/Det_blaa_kort.aspx

Question 30: What (if any) national case law exists concerning access to health care by EU citizens residing in your country? Has EU law been invoked and, if so, in what ways?

EU law has especially been invoked by citizens – mostly Danes – in order to *export* the health cover to other Member States where they wished to receive treatment at the cost of the Danish State. There is indeed some case-law before the *National Agency for Patients' Rights and Complaints* (since October 2015 known as the *Authority for Patients Safety*). The Agency acts as an appeal board *inter alia* for decisions adopted by the regions refusing to grant authorisation for treatment in another Member State and/or to compensate for the costs. It is interesting to note that the Agency in the period after the adoption of the Directive but before its implementation was more progressive towards EU law than the Danish administration.⁷⁹ In its assessment of complaints, the board referred directly to the European Court's case-law and did not take the Danish rules on their face value. This is true in respect of medical treatment provided by a doctor established in another Member State where the board claimed that the national rules breached EU law as mentioned above.⁸⁰ Also in 'hospital cases', the board examined case by case whether there was a legitimate planning ground that could justify a requirement of prior authorisation. According to the board, not all treatment provided at hospitals could be exempted from the patient's free choice.⁸¹ The decisive criterion seems to be whether the treatment only concerns a limited group of patients and where there therefore is a need to preserve national expertise on its territory. The board is thus more in line with the Directive than with Danish authorities. Most complaints are assessed before the complaints board, therefore to my information there is only one health care case the Supreme Court referred to the European Court's case-law, but dismissed the patient's EU-claim.⁸²

CHAPTER 7: RIGHT TO HOUSING

Like in most capital cities, access to affordable housing in Copenhagen can be difficult. The specific set-up of the renting market still prioritises to some extent those who have long leaved on the Danish territory to the detriment of migrants. Thus, obstacles in accessing reasonable housing seem to be circumscribed to the capital city and seem to be more of a practical nature than of a legal one.

7.1. Types of housing benefit

Question 30: What types of housing benefit exist in your country?

- a. *social housing (in kind)*
- b. *Subsidies for low incomes (rent)*
- c. *Subsidies for house owners (mortgage)*
- d. *Access to temporary or emergency accommodation?*

⁷⁹ The following is based on C. Jacqueson, 'From negligence to resistance – Danish residence schemes in the light of EU free movement law', (2016) EJSS (forthcoming).

⁸⁰ The National Agency for Patients' Rights and Complaints' decision in case No 14POB040, 31 March 2014.

⁸¹ For references, see C. Jacqueson and M. Hartlev, 'Sygdomsbehandling i EU - en ret for de få? Om Danmarks anstrengte forhold til patienters fri bevægelighed', (2014) 6 Juristen.

⁸² U.2004.1126H.

The municipalities are responsible for dealing with problems of social housing and thereby securing temporary housing for those without a roof. Yet, municipalities are not under a legal obligation to find permanent housing for people in need.⁸³ According to the Act on Service, there is a right to *temporary housing* for ‘homeless’ people, provided that this is not the result of their own fault. Such help is in the form of access to shelter or other accommodation.⁸⁴ In order to solve the problem of more *permanent housing* for people in need, the municipalities dispose of one essential tool: referring people to *social housing* (*almene boliger*). This type of housing is built with financial help from the municipality, but is administrated by private associations according to the Act on Social Housing.⁸⁵ The municipalities have a right to dispose over some of the apartments in such buildings, typically 1 out of 4. There are approx. 500 000 social housing in Denmark. Some municipalities also own buildings where they can house people in need of help. This is no longer the case for Copenhagen, the capital city, which sold all its properties in the mid-1990s.

In addition, Danish law provides for *housing subsidies* to persons and families with low income in order for them to access and remain in decent housing. The level of the subsidy is defined in accordance with the levels of rent and income as well as the surface of the place and the number of persons living there. Generally subsidies are only given in respect of rented housing with the exception of retired people who might be entitled to the subsidy even if they own their home. Persons with a retirement pension from other Member States are put on an equal footing where the pension is covered by Regulation 883/04. It is in addition a condition for obtaining the subsidy that the person is genuinely using the accommodation which cannot be a summer house. Absence from the country for more than 6 months per year terminates the right of subsidy. The subsidy is not exportable which can be a problem for pensioners establishing themselves in another EU country who are in most cases still liable to pay taxes in Denmark of their Danish pension. According to the Budget Act of 2011, the costs of housing allowances amounted to 11.7 milliard of kr. (approx. 156 9248 102 Euros). Out of the approx. 516 000 persons, who received the benefit in 2010, 29 700 persons were foreigners (from which 12 000 persons were third country nationals, 11 200 refugees) thereby amounting to 6 % of the total amount of recipients.⁸⁶ According to a note from the Ministry of Social Affairs from 2014, 10 000 Union citizens were in receipt of house subsidies in 2012, a number which had increased with 32 % where compared with the situation in 2008.⁸⁷

Finally, all interests resulting from loans, including mortgages, can be deduced from the taxable income. In practice, this means that the State pays approx. more than 1/3 of the interests attached to loans. This deduction of interest makes it cheaper for people to borrow money, also in respect of property purchase. All types of loans are here covered by the tax deduction measure.

7.2 Access to housing by foreigners

⁸³ Anker, J.; Christensen, I; Romose, T.S. & T.B. Stax from the Social Research Institute (*Socialforskningsinstituttet, SFI*), *‘De almene bolige og ansvaret for de svageste’* (Social housing and responsibility for the weak), 2002. Can be downloaded here: http://www.sbi.dk/download/pdf/tbs_02.pdf

⁸⁴ The Act on Service (*‘Serviceloven’*, LBK nr 1023 af 23/09/2014).

⁸⁵ LBK nr 961 af 11/08/2010 (*‘lovbekendtgørelse om leje af almene boliger’*).

⁸⁶ Report on residence requirements for foreigners’ access to Danish welfare services, (*‘Rapport om optjeningsprincippet ift. danske velfærdsydelse’*), March 2011, Commission on foreigners’ access to welfare services (*‘Udvalg om Udlændinges ret til velfærdsydelse’*), p. 126.

⁸⁷ *‘Notat fra Socialministeriet til Europaudvalget om vandrende arbejdstagere rettigheder, 19. februar 2014’.*

Question 31: What are the rules and regulations governing EU citizens' access to social housing when they arrive in your country? In what ways (if at all) does your country differentiate between EU citizens, third country citizens and refugees?

Question 32: Do eligibility criteria governing access to social housing differ for EU citizens compared to national citizens?

Question 33: Is a distinction made between individuals and families in this respect? In what way does family status (married vs non married couples, presence of under age children, etc) hinder or facilitate the access to housing benefit or provision?

Question 34: What practical restrictions (if any) are EU citizens from other countries likely to face in accessing affordable and adequate housing once they arrive within the country?

Question 35: What is known about the type and quality of housing accessed by EU citizens when they arrive?

Question 36: What other factors may affect access to affordable and adequate housing? E.g

- a. General shortages in housing stock*
- b. Negative public/institutional opinions and attitudes*
- c. Accommodation being tied to work contracts*
- d. Lack of supervision/monitoring of housing stock accessed by EU citizens*

Question 38: Has EU law been actually invoked in procedures and, if so, in what ways?

As mentioned above, Denmark has long had in place a system of social housing (*almene boliger*) ensuring that people unable to find accommodation on the 'normal' private market have access to quality housing at reasonable prices.⁸⁸ This sector has long been characterised by an overrepresentation of ethnic minorities (non-Danes). For example, in 1996 the social housing sector was overrepresented by ethnic minorities by 180 %, especially foreigners outside the EU. While 60 % of ethnic minorities live in the social housing sector, only 20 % of the total population do. Some social housing areas are thus dominated by foreigners and by people outside the labour market. Therefore, since the 2000s, the authorities have tried to avoid segregation and ghettoization through various initiatives aimed at ensuring more mixed population in social housing. Since 1984, the municipalities have been able to place people in need in 1 out of 4 apartments in social housing. While the selection criterion was solely based on the need for help, since 2005, municipalities can also stimulate people to move out of specific areas in order to avoid ghettoization. In this respect, they can propose financial support to persons who want to move out from these areas, such as help to buy new furniture. Yet this subsidy has rarely been given in practice.⁸⁹ For the remaining proportion of accommodation in such social housing (3 out of 4) which are administrated by the private associations of inhabitants, the selection rules have also been amended over time with the aim of ensuring that applicants with stronger resources enter disadvantaged areas and thereby remedy ghettoization. Since 1992 people have been put on a waiting list and accommodation has been attributed according to 'seniority'. As a result, renting rules for social housing can best be described as based on a combination of need for housing and seniority. The situation got more complicated since the new millennium with the possibility of using flexible renting. Waiting lists can thereby be disregarded in order to affect the composition of inhabitants in the social housing sector, advantaging specific groups of people deemed to have more resources, who can thereby contribute positively to socially redesigning a given area.

While access to social housing in the fight against ghettoization can negatively affect the possibility of finding housing for ethnic minorities and/or persons outside the labour market, there is no indication that this is negatively affecting EU-nationals. Provided that they fulfil the criteria, Union citizens can be referred to social housing by the municipality or can be registered on the waiting list for social housing. Yet, this requires that

⁸⁸ The following is essentially based on N. Nielsen, 'Retten til et hjem' (The right to a Home), DJØF 2011, pp. 204-213.

⁸⁹ Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011, Commission on foreigners' access to welfare services ('Udvalg om Udlændinges ret til velfærdsydelser'), p. 133.

Union citizens are informed of such possibilities and are armed with patience since the waiting time can be quite long depending on the area sought.

The other possibility for accessing rented housing is the 'normal' private market. Yet, access is difficult for people who have just arrived in the country as the market has long been dominated by private associations, like pension funds, which like the social housing associations, operate with waiting lists. Since some Danes have been put on these lists from their birth, competition for accessing private rented housing can be tough.

While the private renting market is adapting to increased demand and a lot of new accommodation is in the process of being built (some with an imposed loft on rents), the only other possibility for quickly accessing housing for foreigners is to buy their housing. Here again the situation is complicated by the existence of two types of ownerships: full property ownership and 'cooperative' property ('*andel*'). While the latter is cheaper, especially because it is not subject to property tax, it is also a less transparent market, difficult to access at a reasonable price without a network. At the end of the day, for many Union citizens, the only possibility for quickly establishing a home is to buy their housing. This is quite expensive, especially in the capital city, and a possibility which is far from available to all. Also, the market for student accommodation in the capital is currently close to saturation.

Finally, to my knowledge, EU law has not been activated in any proceeding on accessing accommodation.

To conclude there is no evidence that Union citizens are discriminated in accessing housing or housing subsidies. It is the special set up of the rented market, especially accessible for those who have always lived in Denmark, and a shortage of rented accommodation in the big cities which make it difficult for Union citizens and other foreigners to find decent and reasonable priced housing.

Question 37: How does access to housing for EU citizens relate to equal treatment provision, e.g. Article 45 TFEU, the residence directive, Article 18 TFEU?

The Housing Allowance Act does not discriminate according to nationality as all citizens who have their main residence in Denmark are entitled to housing benefits provided that they fulfil the conditions thereof, cf. the analysis under question 30.⁹⁰ In addition, when the Act contains specific rights and conditions for pensioners, it puts on the same level citizens who receive a pension from other Member States. Finally, there is no reference to Art. 18/45 TFEU in the Act, but the Act does not distinguish between persons in employment and persons outside with the exception of pensioners. To conclude the Act complies with both Treaty provisions.

⁹⁰ See further, [bekendtgørelse af lov nr. 128 om individuel boligstøtte](#), 18 February 2015.

CHAPTER 8: RIGHT TO EDUCATION

In the following I will concentrate on the right to compulsory education and higher education focusing especially on the issue of language which can constitute a barrier for migrant citizens and their children.

8.1. Right to compulsory education

Section 76 of the Danish Constitution dating back to 1849 provides for free compulsory education to all children. All children regardless of nationality who intend to live in Denmark for more than 6 months are subject to compulsory education in Denmark either at public school or at a school recognised as equivalent by the State.

8.1.1. Access to compulsory education of foreigners

Question 40: How far do educational systems take account of needs of children of EU citizens from other member states? E.g

- a. Allocation of school places and staffing levels
- b. Provision of language support
- c. Inclusive curricular /promoting integration in schools

The teaching language in schools is Danish unless an exception has been granted (17 private schools in 2011 were providing teaching in another language than Danish).⁹¹ The ministry of education adopts more specific rules in respect of Danish as a second language, having an impact on those children who have another mother tongue than Danish and who first learn the language through contact with the Danish society and eventually through school. Lessons in Danish are provided for those who have been accepted to a Danish speaking school, but who need supplementary teaching in Danish, and for those who do not have a sufficient knowledge of Danish. Special classes for pupils who have moved to Denmark after their 14th birthday can be set up. In 2009, approx. 716 200 pupils in the age of compulsory schooling were enrolled at schools. Most of them were of Danish origin or had Danish nationality and only 4.5 % were foreigners (most of them being nationals from third countries or refugees).

8.1.2. Practical obstacles and strategies for facilitating schooling of foreigners

Question 41: What practical barriers do children of EU citizens from other countries face (if any)? Is a distinction made between EU citizens and third country citizens, and refugees?

As mentioned above, Danish law is addressing the issue of language and providing facilities for acquiring Danish language skills as a second mother tongue. Whether this strategy succeeds in practice is another story, which is difficult to address within the context of this questionnaire. There might especially be a problem in acquiring Danish language and integrating into the Danish education system in schools where there is a huge concentration of 'foreigners' (schools in the ghetto areas mentioned above concerning the housing issue). There might also be discrimination in respect of schooling of third country nationals in private schools. State

⁹¹ Report on residence requirements for foreigners' access to Danish welfare services, (*Rapport om optjeningsprincippet ift. danske velfærdsydelse*), March 2011, Commission on foreigners' access to welfare benefits (*Udvalg om Udlændinges ret til velfærdsydelse*), p. 178.

subsidies for pupils in private schools are indeed conditional upon the pupils living in Denmark, and their parents shall also be residing in the country, be Danish nationals or have lived in the country for more than 5 years. This condition does not apply *inter alia* for parents who are nationals of another EU/EEA country or who have a right to stay as refugees.⁹²

Question 42: What strategies are in place (if any) to facilitate educational access of children of EU citizens from other countries? Is a distinction made between EU citizens and third country citizens, and refugees?

To my knowledge there is no specific strategy put in place to facilitate access of children of EU citizens apart from what has been mentioned above. Yet, since 2010 all children shall have their Danish languages skills assessed at the age of 3 in case of doubt.⁹³ The purpose is to ensure that all children early get the necessary support to develop their Danish language skills and thereby ensure a smooth transition to school.

8.2. Right to Higher Education

Question 43: What restrictions (if any) are placed on EU citizens from other countries in accessing higher education, over and above those placed on national citizens? E.g

- a) Additional costs
- b) Restricted access to available financial assistance/study grants (e.g whether or not working)
- c) Non recognition of academic qualifications valid in country of origin
- d) Priority of access given to national citizens
- e) Any other identifiable restrictions

Question 44: What policies/strategies (if any) are designed to limit the restrictions on EU citizens from other countries accessing higher education in the country?

By higher education I mean high schools, vocational training and universities. Courses in high schools are generally taught in Danish unless schools have been granted a right of derogation from the Ministry of Education entitling them to teach in French, German or English. In addition, in 2011 there were nine schools which educate for obtaining of the International Baccalaureate (IB) for those who are interested in an international and English speaking education. It is especially suited for Danish students who have studied abroad and for foreign pupils. Access to IB is not regulated by Danish law.⁹⁴ It is to some extent disputed whether an IB in practice actually gives access to university studies in Denmark on the same terms than for those in possession of a Danish degree. As access to a given study is conditional upon having obtained a minimum average at the exam (which varies from field to field and therefore access to some studies is more

⁹² Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011 Commission on foreigners' access to welfare benefits ('Udvalg om Udlændinges ret til velfærdsydelser'), pp. 178-179.

⁹³ Cf. 'Dagtilbudsloven' §§ 11 og 1, LBK nr 1127 af 20/10/2014.

⁹⁴ Report on residence requirements for foreigners' access to Danish welfare services, ('Rapport om optjeningsprincippet ift. danske velfærdsydelser'), March 2011, Commission on foreigners' access to welfare services ('Udvalg om Udlændinges ret til velfærdsydelser'), pp. 179-180.

difficult than others), it is disputed whether the conversion system used in respect of IB is in fact guaranteeing access on equal terms.

Teaching is free of charge at public schools as it is financed by the State, and is dependent upon payment at private schools. Access to high school for pupils who have studied abroad is dependent upon academic qualifications equivalent to those of 'Danish' students. Those qualifications are assessed by the responsible person in each school who might request the pupil to take a test in one or more courses. In 2009, only approx. 3.5 % of high school pupils were foreigners and the majority was from third country nationals or refugees.

Schools proposing *vocational training* can require knowledge of the Danish language as a condition for enrolment. Yet this condition cannot be imposed when pupils have been accepted upon an exchange agreement. State subsidies per pupil are given upon the condition that the foreign pupil has a permanent right of residence in Denmark, is an EU/EEA national, is coming pursuant to an agreement concluded between a Danish school and an institution abroad, or is covered by a relevant international agreement. The same picture concerning the proportion of foreigners applies for vocational training where approx. 6.5 % of the pupils are foreigners.⁹⁵

Concerning *further education* both at *professional schools and universities*, courses can be taught in other languages than Danish. Yet, Danish institutions might require proof of sufficient knowledge of the Danish language where necessary. Enrolment of foreign students at professional schools also gives rise to state subsidies on an equal treatment basis. In respect of universities, they only receive state subsidies for specific enrolled foreign students. Thus only third country nationals who have permanent right of residence or are children of a foreigner with a right to work in Denmark as well as EU/EEA nationals have free access to universities on an equal treatment basis. In 2008, approx. 8 % of persons studying at Danish professional schools or universities were foreign nationals and this time the majority was EU/EEA nationals.⁹⁶

As mentioned above only pupils and students of Danish nationality, EU citizens who work in Denmark and foreigners who have a permanent right of residence in Denmark are entitled to a maintenance grant ('SU') and to export it for studies in other Member States.⁹⁷ The number of Union citizens receiving the study maintenance grant rose from 5 077 (where 1 045 were from the 10 East-European countries) in 2008 to 11 189 in 2013 (where 4 229 were from the 10 East-European countries). Union citizens receiving the Danish student grant in 2013 amounts to 2.5 % of the total number of recipients.⁹⁸

Question 45: Do EU nationals have access to study grants (are there differences between workers, non-workers, family members?)

The Act and Executive Order on student maintenance grants and loans distinguish between Danish nationals and Union citizens who are workers/self-employed or related to them, on the one hand and other Union citizens, on the other hand.⁹⁹ Danes, Union citizens who are considered as workers or self-employed pursuant

⁹⁵ Report on residence requirements for foreigners' access to Danish welfare services, ('*Rapport om optjeningsprincippet ift. danske velfærdsydelse*'), March 2011, Commission on foreigners' access to welfare services ('*Udvalg om Udlændinges ret til velfærdsydelse*'), pp. 181-182.

⁹⁶ Report on residence requirements for foreigners' access to Danish welfare services, ('*Rapport om optjeningsprincippet ift. danske velfærdsydelse*'), March 2011, Commission on foreigners' access to welfare services ('*Udvalg om Udlændinges ret til velfærdsydelse*'), p. 183.

⁹⁷ Act on the State's maintenance grant for studies ('SU'), LBK nr 39 af 15/01/2014 and bekendtgørelse (executive order) nr. 792, 25 June 2014.

⁹⁸ Note from the Ministry for Education and Research to the Parliament's Committee for Europe of the 16th of January 2014 ('*Orientering om udviklingen i antallet af SU-modtagere og udenlandske statsborgeres ligestilling til dansk SU*').

⁹⁹ Act on the State's maintenance grant for studies ('SU'), LBK nr 39 af 15/01/2014.

to EU law and their family members are entitled to the maintenance grant (SU). Furthermore, they can ‘export’ it for studies in other Member States after a period of two years residence in the country or where other factors of attachment to the country are fulfilled.¹⁰⁰ In contrast, all other Union citizens are first entitled to the aid after 5 years of residence (permanent right of residence) where after they can also ‘export’ the grant to study in the Member State of their choice.

Following a change of practice in light of the *LN*-ruling (C-42/12), The Danish authorities in charge of study grants were strict in their assessment and control over Union citizens’ status as workers. Several complaints cases have thus reached the Appeals Board for Student Maintenance Grants and Loans in the last two years. The Board relied directly on the Court’s case-law in defining case by case the situations where the Union citizen should be considered as worker (*Levin, Genc, raulin, Ninni-Orasche*). For example, the Board annulled a decision of the authorities denying the status of worker to a person on the ground that the salary received was symbolic.¹⁰¹ The Board found that the citizen had been working 60 hours a month and was subsequently paid a salary which could not be seen as marginal.¹⁰² He was therefore entitled to the grant as a worker.

Question 46: Is it possible to export the study grant for a certain period (to study abroad). Which national rules apply? Have these been affected by EU law (art. 45 TFEU, article 18 TFEU, ‘Förster judgment’)?

As mentioned above, it is possible to export the Danish maintenance grant (SU) for studying in another Member State. There are some conditions attached to this right which are two years of residence for Danes and economically active Union citizens and their family members. Yet, other criteria than residence might be relied upon to demonstrate a specific link to the Danish territory. This might for example be schooling in Denmark and/or close family ties to Danish citizens.¹⁰³ For Union citizens who cannot qualify as workers or self-employed or family members thereof, export is first possible after 5 years of residence.¹⁰⁴

The Danish rules were first amended in 1998 inserting a requirement of residence of two years for Danes for exporting the grant to other countries.¹⁰⁵ The intention was to limit the situations where Danes can claim the grant while studying abroad to citizens who effectively have a close link to the Danish society. While the amendment would also affect other nationals entitled to the aid, the large bulk would be the state’s own nationals. In 2006, the Study Maintenance Grant Act enlarged the circle of beneficiaries to citizens of other Member States, especially workers, self-employed and their family members.¹⁰⁶ The Act also specified that inactive Union citizens should not be put on an equal footing to Danish citizens and should be subject to a requirement of 5 years residence for claiming the grant. This reflects the Citizenship Directive’s Art. 24(2) and the *Förster*-ruling. Practice concerning the definition of worker was as mentioned several places in this report changed following the *LN*-ruling. The change of practice was also the result of the pressure put by the Ombudsman on the Danish Appeals Board which finally led it to ask a preliminary ruling to the CJEU.¹⁰⁷ One of the last changes of the rules is openly triggered by EU law and the Court’s case in *C-542/09 Commission v The Netherlands* and similar cases from the same period. The law was changed as to introduce other criteria than

¹⁰⁰ Bekendtgørelse (executive order) nr. 792, 25 June 2014, §1-2.

¹⁰¹ Decision of the Appeals Board, KEN nr 10426, 15/12/2014.

¹⁰² See also Decision of the Appeals Board, KEN nr 10423, 15/12/2014

¹⁰³ Bekendtgørelse (executive order) nr. 792, 25 June 2014, §2.

¹⁰⁴ Bekendtgørelse (executive order) nr. 792, 25 June 2014, §3.

¹⁰⁵ H. Skovgaard-Petersen, *Uddannelsesstøtten i EU-retligt perspektiv - Studiejob eller statsborgerskab*, Juristen 2013 at p. 82.

¹⁰⁶ Lov nr. 312, 19 April 2006 mentioned in H. Skovgaard-Petersen, *Uddannelsesstøtten i EU-retligt perspektiv - Studiejob eller statsborgerskab*, Juristen 2013 at p. 81.

¹⁰⁷ H. Skovgaard-Petersen, *Uddannelsesstøtten i EU-retligt perspektiv - Studiejob eller statsborgerskab*, Juristen 2013 at p. 87.

the residence requirement as conditions for the right to export. Thus in compliance with the case-law of the Court, citizens can show a close link to the Danish society by other means than residence, essentially schooling, family ties and previous work.

Question 47: What is the position of, third country nationals in relation to access to education (primary, higher), study grants, export of study grants, fees for higher education?

The position of third-country national in relation to education is less favourable than that of Union citizens. In respect of state subsidies per pupil, see question 43. In addition, third-country nationals are entitled to Danish maintenance grants and loans if they fall within one of the categories mentioned in the Executive Order.¹⁰⁸ This will encompass those who have stayed in Denmark for more than 5 years provided that they haven't come to the country for the purpose of study, foreigners who have only stayed in Denmark for 2 years but who are either married to a Dane or have had substantial work in the country. Third-country nationals who are not family members to an EU national do not have the possibility to export the maintenance grant while studying abroad, cf. the Executive Order. Finally, third country nationals have free access to universities if they have a permanent right of residence in the country or are likely to get one or have been granted a 'free place' to study.¹⁰⁹

CHAPTER 9: PARTICULAR GROUPS

Question 48: Are there any particular groups of people from other EU member states likely to face additional barriers to accessing their social rights to subsistence benefits, health care, housing and education? If so which groups are particularly affected and what are the additional barriers they are likely to face?

Question 49: What evidence is there (if any) of people being subjected to forced labour in your country?

Question 50: What measures are in place to prevent exploitation of workers from other EU countries? How effective are they?

Groups of EU/EEA nationals who can be particularly disadvantaged in Denmark are those who are at the fringe of society like homeless people and the Roma minority as described above. In this respect, it will depend on which perspective the situation is seen from. Indeed, some might say that such groups in any event enjoy very limited protection and access to social rights if any. Whereas other might argue that given the principle of free movement, one cannot select the undesirable from the desirable, and free movement of the 'poor' is just the other side of the coin of free movement. One might therefore argue that it is difficult if not impossible to classify EU/EEA nationals as unlawful residents and expel them. Yet, this is not the position adopted by several Member States, where expulsion of Union citizens on economic grounds has been practiced recently. Such

¹⁰⁸ Bekendtgørelse (executive order) nr. 792, 25 June 2014, §9.

¹⁰⁹ Report on residence requirements for foreigners' access to Danish welfare services, (*Rapport om optjeningsprincippet ift. danske velfærdsydelse*), March 2011, Commission on foreigners' access to welfare benefits (*Udvalg om Udlændinges ret til velfærdsydelse*), at p. 182.

expulsions are not (yet) practiced in Denmark. Such more restrictive approach seems to have been explicitly endorsed by the CJEU in the recent cases of C-140/12 *Brey* and C-333/13 *Dano*.

Another group of Union citizens and EEA nationals that might have difficulties in exercising their EU rights are those which are resident for less than 3 months and jobseekers since they cannot obtain a CPR. number, and are thereby excluded from access to housing, social benefits, and basic services like opening up a bank account, having a phone line and access to health care which is not emergency treatment. Jobseekers have recently been denied access to job centres and use of the job search facilities on the ground of lack of a cpr. number. By definition, all those who do not have a cpr. number encounter difficult times, where they have to live at the margin of society without any public help or access to facilities. Finally, as mentioned above, in respect of jobseekers, they are excluded from access to social assistance on an equal treatment basis even though it can be argued that it is a benefit facilitating access to the labour market in light of the *Vatsouras* ruling.

The last category of people who might not have their basic EU-rights respected is that of posted workers. It is especially in respect of access to decent housing, wages, working conditions and safety at the work place that problems arise. Here we can talk of exploitation of such workers by the posting undertaking. Such posted workers are essentially used in the construction sector in Denmark. In many instances, this follows from a public procurement procedure for the construction of public work such as bridges and the metro. There are some public measures put in place in order to combat such type of abuse and exploitation. Likewise, the unions are very active on this issue both in respecting the basic/minimum rights of the posted workers and protection the Danish workers from disloyal competition on wages and working conditions.

To my knowledge, there is no evidence of forced labour in Denmark apart from the prostitution sector where people might have been the subject of human trafficking.

CHAPTER 10: OVERALL POLICY RESPONSE

Question 51: How (if at all) is government policy responding to identifiable restrictions on EU citizens' access to their social rights to subsistence benefits, health care, housing and education?

For the time being, the response of the government to the problems mentioned above has been very sparse. One exception is the protection of posted workers and the protection against social dumping. In most cases, the government will just reply that there is no EU-protection in the given situation and therefore no infringement of Denmark's EU obligations. This is especially true in respect of the protection of homeless migrants and jobseekers. The government has so far not reacted to the issue of cpr. number, which has only very recently been salient in the Danish media.

Question 52: Have there been any comments (or recommendations) made by supranational bodies (European Court Justice, UNHCR, etc.) on the policy with regard to immigrants in your country in the past 4 years? How did the government in your country react to such comments?

The European Commission has recently focused its attention on access to social benefits for migrant citizens, especially workers. It has virulently criticised the Danish government for its discriminatory treatment in respect of access to family benefits of Union citizens. As a result, the Social-Democrat/Centre government changed its practice, but not the Act itself as it could not find a majority in this respect, which constitutionally is a rather unusual situation. Likewise, the Commission has criticised the rules on unemployment benefits requiring a minimum period of work in Denmark as being contrary to the EU social security regulation. This time, the government refused to abide by the Commission and at the time of writing it is uncertain whether the Commission will take the Danish State to court or not. Another area which might come under the EU spot light is the implementation of the Patients Rights' Directive of 2011.

Looking at the Council of Europe, the Committee on Social Rights concluded in January 2014 that Denmark did not comply with the European Social Charter of 1961 with regard to social security protection of migrants.¹¹⁰ It noted *inter alia* that the right of equal treatment in accessing social security and the principle of acquired rights was not guaranteed to migrants of other States.

Finally, from an international perspective, the report of the working group on the Universal Periodical Review of the Human Rights Council of the United Nations of 2011 has listed a number of areas where Denmark could improve the conditions for migrant citizens.¹¹¹ The submitting states recommended Denmark *inter alia* to become a party to the convention on the protection of the rights of migrant workers and their family members; to address the issue of access to health care by asylum seekers who are barred from it due to the absence of a social security number (cpr. number); to make sure that its law on acquiring Danish nationality complies with the convention on the reduction of statelessness; to amend its legislation on family reunification; and to review its practice of returning aliens where they might encounter real risks of persecution.

Question 53: In your view, what further measures could be taken to ensure that EU citizens from other member states have full access to their social rights to subsistence benefits, work, health care, housing and education?

Information of citizens' EU rights might be a key word and a solution here. Information of their basic rights such as access to social assistance, housing and health care does not seem to be easily accessible. The existence of the Solvit network as an efficient problem solver is apparently not part of the general picture. In big cities, the municipalities have put in place international centres where newcomers can get practical information of the procedures to follow in order to get a cpr. number, etc. Yet, this does not seem to work out in practice for all categories of immigrants and all claims. In this respect, the system of cpr. numbers shall be revised to make it compatible with modern migration patterns, which can be of short duration.

Some experts on social law and the welfare state have argued that one of the problems in Denmark in respect of access to social rights for Union citizens is the fact that many welfare services and social rights are financed through the general taxes. This has the effect that the tax payer's money is disappearing in a giant common

¹¹⁰ Committee on Social Rights of the Council of Europe, Conclusions on the European Social Charter for Denmark (Art. 3, 11, 12, and 14 of the Charter of 1971 and Art. 4 of the additional protocol of 1988). Can be downloaded here:

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Denmark%20XX2_fr.pdf

¹¹¹ Report of the Working Group on the Universal Periodical Review of the United Nations, General Assembly, Human Rights Council, 11th of July 2011 which can be found here:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/145/41/PDF/G1114541.pdf?OpenElement>

pot where taxpayers do not know what exactly they are financing.¹¹² Transparency and allocation of tax payer money to specific 'budgets' such as unemployment benefits, health, family benefits and so on might partly alleviate the problem of the migrant being the illegitimate recipient of social benefits and rights. Switching from a tax financed social system to one financed through compulsory insurance, like in other Member States, might be an even more radical solution in the same spirit, but has its costs on the social side. Finally one could argue that the unwritten social contract adhered to by the Danish population insuring universal rights and services through taxes can remain unchanged provided that this very social contract is reassessed in the light of migration and eventually modernised.

Yet, it is generally accepted that when looking at the evidence such as relevant figures, migrant Union citizens are actually not a burden on the state's budget, quite on the contrary, and therefore they are not a real threat upon the Danish welfare system. Yet, the fear among some is that the picture might change and go in the opposite direction in the future, especially in respect of some benefits such as access to student maintenance grants.

A change of public and political discourse is necessary in order to put down walls between the Danes and the migrant populations. Focus should more systematically be put on immigrants and migrants as a resource for the State and a necessary pillar in maintaining a welfare state or society. At present time, political and media discourse is going in the opposite direction, where foreigners are mostly seen as a negative asset. EU law is in this respect perceived by many – even pro-Europeans – as an illegitimate (and at times undemocratic) intruder which is disturbing social peace and the unwritten social contract that the Danes have subscribed to for more than 100 years ago.

In connection with this last point better information of the authorities and the courts of the existence of EU law and the precise content of migrants' rights is needed. Courts' willingness to refer questions to the European Court of Justice might also be improved.

Finally, one might argue that some problems cannot be effectively addressed at national level and common EU guidelines/rules and subsidies as well as coordinated EU action are needed. I am here especially referring to the phenomenon of migration of the 'poor' and discrimination of the Roma minority.

¹¹² K. Ketscher, *'Social ret – Principper, rettigheder, værdier'*, Karnov 2014, especially pp. 327-331.